

CHAPTER II EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

A. Introduction and methodology

1. This chapter describes some of the most important aspects of freedom of expression in the hemisphere during 2011. Its objective is to begin a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, to publicize their best practices, report some serious problems observed, and formulate viable and practical recommendations based on the Declaration of Principles.

2. As in previous annual reports, this chapter exposes the aspects of the right to freedom of expression that merit greater attention and that have been reported to the Office of the Special Rapporteur during the year. Following the methodology of previous annual reports, this chapter is developed from the information received by the Office of the Special Rapporteur from various State, intergovernmental and non-governmental sources. The information provided by States, presented during the hearings held by the IACHR, submitted by non-governmental organizations in the region, and contained in alerts sent by media and communicators is of particular importance to the Office of the Special Rapporteur. In all cases, the information is contrasted and verified so that the only information that is published is that which will serve to assist the States to identify particularly problems or tendencies that must be addressed before they could eventually cause irreparable effects.

3. The selected information is ordered and systematized in a manner so as to present the advances, setbacks, and challenges in various aspects of the exercise of the right to freedom of expression, including progress made in legal or legislative matters, as well as the most serious problems that arose throughout the year, such as murders, threats and attacks against journalists related to the exercise of their profession; disproportionate impositions of liability; the progress and challenges in the right to access to information, among others.

4. The cases selected in each topic serve as examples that reflect the situation in each country in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. It is pertinent to clarify that the omission of analysis of the situation of some cases or States is due to the fact that the Office of the Special Rapporteur has not received sufficient information. As such, these omissions should be interpreted only in this sense. In the majority of cases, the Office of the Special Rapporteur provides the direct source, citing the electronic address of the corresponding Web site. When the information is not published directly, the report cites the date the information was received in the electronic mailbox of the Office of the Special Rapporteur. This report does not include information that has been submitted to the Office of the Special Rapporteur through requests for precautionary measures which have not yet been made public.

5. In preparing this chapter of its 2011 Annual Report, the Office of the Special Rapporteur generally took into account information received until November, 2011. Information regarding incidents that occurred after the date the 2011 Annual Report went to press is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

6. Finally, the Office of the Special Rapporteur acknowledges the collaboration of the OAS Member States and the civil society organizations that contributed information about the

situation of the exercise of freedom of expression in the hemisphere. The Office of the Special Rapporteur encourages the continuation of this practice, as it is fundamental for the enrichment of future reports.

B. Evaluation of the state of freedom of expression in the Member States

1. Argentina

A. Progress

7. The Office of the Special Rapporteur expresses its satisfaction at the conviction of former soldiers responsible for the disappearance and murder of journalist Rodolfo Walsh, who was disappeared on March 25, 1977. According to the information received, on October 26, 2011, the Oral Criminal Federal Tribunal No. 5 of the Autonomous City of Buenos Aires convicted 16 former soldiers accused of crimes against humanity in the so-called “ESMA Megatrial,” handing down sentences ranging from 18 years to life in prison for the kidnapping, disappearance, torture and murder of 86 people. Walsh, a well-known writer, investigative journalist and activist against the dictatorship, was among the disappeared journalists.¹

8. The Office of the Special Rapporteur learned of the arrest and charging of an individual suspected of murdering journalist and community organizer Adams Ledezma Valenzuela. His death took place on September 4, 2010, in a poor neighborhood in Buenos Aires. According to the information received, on May 4 the authorities arrested Cristian David Espínola Cristaldo, alias Pichu, and charged him with committing the crime of homicide. According to the information, the crime took place because Ledezma had prevented the suspect from selling drugs to minors. Argentine journalism organizations asked the authorities to investigate fully the motives behind the murder and its possible relationship with the statement Ledezma made months before dying that he would reveal the identities of well-known persons who came to the neighborhood to buy drugs. Ledezma was a correspondent with the newspaper *Mundo Villa* and was working on the launch of television channel *Mundo TV Villa*, which was going to be carried into community homes via cable. In statements given to an Argentine newspaper in June of 2010, Ledezma announced the launch of the television channel and said he intended to do investigative journalism. The Office of the Special Rapporteur has learned that the community work Ledezma did was closely linked to his journalistic work.²

9. The Office of the Special Rapporteur takes note with satisfaction of the ruling of the Third Court of the National Criminal Cassation Chamber annulling the conviction for slander issued in 1999 against Eduardo Kimel. The criminal ruling sentenced Kimel to one year in prison, suspended, and the payment of an indemnity of 20,000 Argentine pesos to the benefit of judge Guillermo Rivarola in connection with a publication in which the journalist criticized the actions of the judge with jurisdiction to hear the case of a massacre of three priests and two seminarians in 1976. The ruling is a result of a significant decision of the Argentine State, which in 2009, following a judgment from the Inter-American Court of Human Rights, moved through law 26.551

¹ Judicial Branch of the Nation. Oral Criminal Federal Tribunal No. 5 of the Autonomous City of Buenos Aires. Judgment of October 26, 2011. Available at: <http://www.elargentino.com/gallery/158195.pdf>

² Argentine Journalism Forum (FOPEA in its Spanish acronym). June 3, 2011. *Nine months after the murder of Adams Ledezma Valenzuela*. Available at: http://www.fopea.org/Inicio/A_nueve_meses_del_asesinato_de_Adams_Ledezma_Valenzuela; Página 12. May 5, 2011. *The crime against the journalist from the 31*. <http://www.pagina12.com.ar/diario/sociedad/3-167575-2011-05-05.html>; IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 18. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

to decriminalize crimes of slander and defamation for expression that is in the public interest. Once the law was passed, the Center for Legal and Social Studies (CELS) filed a writ of review over the ruling against Eduardo Kimel before the National Chamber of Criminal Cassation and received the aforementioned ruling to acquit. The ruling ratifies the decriminalization of expression related to matters of public interest and sets an important precedent regarding the admissibility of these kinds of complaints in Argentina.³

10. The Office of the Special Rapporteur observed with satisfaction the ruling of the Supreme Court of Justice dated March 2, 2011, reiterating the State's obligation to adopt a government advertising policy with objective and nondiscriminatory standards. The judgment upheld a 2009 ruling of the National Chamber of Administrative Contentious Federal Appeals and as a result ordered the National State "to order government advertising to be distributed among the different publications" of *Editorial Perfil* and *Diario Perfil*, which had brought the *amparo* action against the Media Secretariat of the Leadership of the Cabinet of Ministers.⁴ The Supreme Court ruling cited the September 5, 2007, judgment in the case of Editorial Río Negro, S.A. against the government of the province of Neuquén according to which "the withdrawing of government advertising was an indirect restriction on the freedom of the press, as it was not based on reasonable and justified standards."⁵ The Office of the Special Rapporteur takes note of the concern in Argentina over the placement of official advertising in the media and highlights the importance of what the Office of the Special Rapporteur ordered in the aforementioned case.

11. The Office of the Special Rapporteur takes note of the August 19, 2011, ruling of the Supreme Court of Justice of the Nation modifying the Rules of the General Archive of the Judicial Branch of the Nation to "provide journalists with free access to federal court judicial cases on subjects of public interest that are found in the General Archive." Currently, journalists must access those documents by following a long proceeding, making their work of informing the public more difficult.⁶

12. The Office of the Special Rapporteur takes note of the government's call for bids on 220 digital audiovisual communication service licenses through 64 public tenders. According to the information received, the process will become the largest tender of free-to-air television channels ever held in Argentina. Currently, 43 free-to-air television channels are operating in Argentina. Of the total licenses to be put up for bids, 110 will be granted to the nonprofit sector, including associations, foundations and cooperatives.⁷

³ Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS). November 24, 2011. *La Cámara de Casación anuló la condena por calumnias contra Eduardo Kimel*. Available at: <http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=1449>; Página 12. November 24, 2011. *Dos años después de su muerte, Kimel fue absuelto por la justicia argentina*. Available at: <http://www.pagina12.com.ar/diario/ultimas/20-181969-2011-11-24.html>

⁴ Supreme Court of Justice of the Nation. Republic of Argentina. March 2, 2011. *Editorial Perfil S.A. y otro c/ E.N. – Jefatura Gabinete de Ministros. SMC s/amparo ley 16.986*. No. Expediente E.80.XLV/2009. Available at: http://www.csjn.gov.ar/consultaexp/documentos/expedientes/cons_expe.jsp

⁵ IACHR. Annual Report 2007. OEA/SER.L/V/II. 131. Doc.34, rev. 1. March 8, 2008. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Situation of Freedom of Expression in the Region). Para. 54. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

⁶ Supreme Court of Justice of the Nation. August 19, 2011. Acordada No. 15/u. Expediente No. 2625-2011. Available at: [http://www.fopea.org/Inicio/La Corte Suprema habilita el acceso de los periodistas a causas archivadas de interes publico](http://www.fopea.org/Inicio/La_Corte_Suprema_habilita_el_acceso_de_los_periodistas_a_causas_archivadas_de_interes_publico)

⁷ Federal Authority of Audiovisual Communication Services (AFSCA). July 14, 2011. *New TV to guarantee greater plurality*. Available at: <http://www.afsca.gov.ar/web/blog/?p=4491#more-4491>; BBC Mundo. June 24, 2011. *Argentine government wants to change the face of TV*. Available at: http://www.bbc.co.uk/mundo/noticias/2011/06/110624_argentina_canales_digitales_nuevos_vs.shtml; La Nación. June 22,

B. Attacks, arrests and threats

13. According to information received, on December 15, 2010, Alejandro Guerrero, a photographer with the newspaper *El Ciudadano* in the city of Rosario, Santa Fe, was arbitrarily arrested by police officers, beaten and detained incommunicado for more than six hours. According to reports, several police officers had confused Guerrero with another person shortly after he witnessed several people evicted from a public space they were occupying. The incident took place after work hours and Guerrero did not have his equipment with him. The officers arrested him and took to a police station, where they beat him. When Guerrero identified himself as a member of the media, he was threatened. On being released without charges, Guerrero filed a criminal complaint and a forensic doctor confirmed the injuries. On December 16, the provincial government of Santa Fe ordered four police officers and two junior police officers connected with the arrests be removed from their positions. In May, a first instance criminal inquiry district court ordered two police officers charged for illegal harassment and humiliation.⁸

14. The Office of the Special Rapporteur learned of an attack on at least one visual reporter for online media outlet *Indymedia* while he was covering a police action to disburse a student demonstration in the city of Córdoba on December 15, 2010. According to the information, a police officer knocked photographer José Fernández's camera to the ground. When the communicator tried to pick up his equipment, several police officers threw him to the ground and beat and kicked him. At least three other photographers were also attacked during the incident. The Police Conduct Tribunal punished one officer with suspension on finding that the police action violated freedoms of expression and the press.⁹

15. According to information received, on May 20, 2011, security personnel of the building where the Danish Embassy is located struck visual media reporter Julián Herr, with the magazine *El Guardián*, while he was trying to take photographs to illustrate an article on gastronomy, restaurants and embassy clubs. According to the information, although Herr had informed the embassy of the work he was doing, two members of the building's security personnel approached him, insulted him and struck him. The attack caused damage to the photographer's septum that required medical attention. The Danish embassy condemned the attack, dismissing the possibility of any kind of prohibition on capturing images of the diplomatic mission and denying any connection with the attackers.¹⁰

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2011. *220 new television channels to be put up for bids*. Available at: <http://www.lanacion.com.ar/1383500-licitaran-220-nuevos-canales-de-television>

⁸ Argentine Journalism Forum (FOPEA in its Spanish acronym). December 22, 2010. *FOPEA issues alert on police abuse against photographer in Rosario*. Available at: http://www.ifex.org/argentina/2010/12/22/querrero_detenido/es/; Uno. December 17, 2010. *Police purge after beating of an El Ciudadano photographer in Rosario*. Available at: <http://www.unosantafe.com.ar/santafe/Purga-policial-tras-una-golpiza-a-un-fotografo-de-El-Ciudadano-en-Rosario-20101217-0017.html>; El Ciudadano. May 4, 2011. *Two police officers charged for abusing photographer*. Available at: <http://www.elciudadanoweb.com/?p=206183>

⁹ Argentine Journalism Forum (FOPEA in its Spanish acronym). December 29, 2010. *Photographers attacked by police officers while covering suppression of a demonstration*. Available at: http://www.ifex.org/argentina/2010/12/29/fotografos_atacados/es/; Argenpress. December 20, 2010. *CISPREN condemns grave police intimidation against photographer for Indymedia Córdoba*. Available at: <http://www.argenpress.info/2010/12/argentina-cordoba-el-cispren-repudia.html>; Indymedia. December 19, 2010. *Press workers attacked by Córdoba police*. Available at: http://www.youtube.com/watch?v=jCYsj9336oCA&feature=player_embedded

¹⁰ Reporters Without Borders. May 24, 2011. *Danish embassy urged to react after security guards assault young photographer*. Available at: http://en.rsf.org/argentina-danish-embassy-urged-to-react-24-05-2011_40340.html; Argentine

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16. On October 27, a Channel 12 vehicle that was properly identified was struck by a bullet while journalist María Gracia Marín and cameraman Raúl Vicessi collected information in the Yapeyú neighborhood in the city of Córdoba. According to the information, a young man had approached the vehicle and fired on it with a pistol, without injuring the van's occupants.¹¹

17. The Office of the Special Rapporteur received information on a series of attacks on and threats against journalist Mario Sánchez that started in June in the city of Centenario in the province of Neuquén. According to the information, on June 19, Sánchez's home was burglarized and set on fire days after several bottles containing flammable liquid had been thrown into the house's yard without exploding; on June 25, a brick was thrown into the home wrapped in a piece of paper containing the text "the one who attacks the MPN. Death;" and finally, during the closing days of June the journalist received several intimidating phone calls. Sánchez is a journalist with municipal radio station *Sayhueque* and is a correspondent in *Centenario* for radio station *AM LU5*. The journalist has commented to several media outlets that he does not know the origin of the threats and has not worked on any stories related to the Movimiento Popular Neuquino (MPN) party, which governs the province. The Neuquén governor condemned the attacks, offered protection to the journalist's family and committed to collaborating with the judicial investigation.¹²

18. The Office of the Special Rapporteur learned of a series of alleged acts of sabotage against a number of radio broadcasters. On September 10, unknown armed individuals damaged the equipment of community radio station *FM Pajsachama*, in El Retiro, Santiago del Estero province, threatening the broadcaster's staff. The broadcaster is owned by the Peasant Movement of Santiago del Estero Peasant Way (MOCASE-VC). The broadcaster suffered an arson attack in 2008.¹³ On December 30, an individual with his face covered threw flammable liquid on the radio station *FM Estación 93.3* in Zárate, Buenos Aires province, and set it on fire. According to the information, the fire caused near total damage; however, the broadcaster was broadcasting again shortly afterward with a lower signal strength through a piece of auxiliary equipment. The attack also affected broadcaster 100.5 which has not been able to return to broadcasting.¹⁴ On October 3, several unknown individuals cut the support cables on the radio and television antenna of *Norte Visión Satelital* on February 20 Hill in Salta, causing it to fall and damage the equipment of another 15 broadcasters. The broadcaster reestablished its signal shortly afterwards with low-power equipment while a new antenna was installed. On September 15, the facilities of *Norte Visión*

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Journalism Forum (FOPEA) May 26, 2011. *Photographer assaulted by security guards*. Available at: http://www.ifex.org/argentina/2011/05/26/herr_attacked/

¹¹ Argentine Journalism Forum (FOPEA)/IFEX November 1, 2011. *Journalism vehicle fired on in Córdoba*. Available at: <http://www.ifex.org/argentina/2011/11/01/canal doce ataque/es/>; EFE News Service. November 2, 2011. *IAPA condemns attacks against journalists in Argentina, Chile and Honduras*. Available at: <http://noticias.terra.com/crimenes/la-sip-condena-atentados-contra-periodistas-en-argentina-chile-y-honduras,afb36ccebe563310VgnVCM20000099f154d0RCRD.html>

¹² Reporters Without Borders. July 4, 2011. *Death threats and attacks on Neuquén radio journalist*. Available at: http://en.rsf.org/argentina-death-threats-and-attacks-on-04-07-2011_40580.html; Argentine Journalism Forum. June 28, 2011. *Serious attacks and threats against Neuquén radio journalist*. Available at: http://www.fopea.org/Inicio/Graves_ataques_y_amenazas_a_periodista_radial_de_Neuquen

¹³ World Association of Community Broadcasters (AMARC). September of 2011. *If you touch one, you touch us all. Stop the violence against MOCASE-VC*. Available at: <http://legislaciones.item.org.uy/index?q=node/3169>; Reporters Without Borders. October 12, 2011. *Salta broadcaster repeatedly sabotaged, other attacks on radio stations*. Available at: http://es.rsf.org/argentina-misterio-en-torno-a-una-serie-de-12-10-2011_41176.html

¹⁴ La Nación. September 30, 2011. *Zárate radio station suffers arson attack*. Available at: <http://www.lanacion.com.ar/1410766-una-radio-de-zarate-sufrio-un-ataque-incendiaro-intencional>; De Radios. No date. *Arson attack against Radio FM Estación 93.3 in Zárate*. Available at: <http://www.deradios.com/nota.php?ID=2573>

Satelital suffered an arson attack that kept the broadcaster off the air for four hours.¹⁵ The Salta provincial government expressed its support for the broadcaster and offered help for improving the security of the broadcast equipment installed on February 20 Hill.¹⁶

19. According to information received, presumed drug traffickers threatened to kill Gloria Seco and Claudio Ruiz, hosts with *Radio Ciudad* in San Ramón de la Nueva Orán, Salta province, after two programs were broadcast questioning the quickness with which the authorities released individual suspected of trafficking drugs. The Office of the Special Rapporteur was informed that on September 24, a local drug dealer warned Seco that her safety and that of Ruiz were at risk. Three days later, the threat was repeated in a phone call minutes after an interview addressing the subject. The local authorities have assigned a police detail to the radio hosts' houses and the radio station.¹⁷

20. According to information received, in the early morning hours of November 7, unknown individuals entered the press room of newspaper *La Verdad*, in the Junín locality, Buenos Aires province, and set fire to the printing press control panel. At that time, nobody was in the building. The paper had to be printed in another city for 10 days while the damage was repaired. The newspaper's management connected the attack with articles published on drug trafficking and abuse of authority in the region.¹⁸

21. Unknown individuals insulted journalist Jorge Lanata and threw rocks at him while he was giving a press conference in a courtyard at the Universidad de Palermo on November 4 together with several colleagues, including Magdalena Ruiz and Gabriel Michi. According to the information received, when the journalists addressed the public, insults toward Lanata were heard for his connection with the newspaper *Clarín* and later several rocks fell on the audience.¹⁹

22. Principle 9 of the Declaration of Principles of the IACHR states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

23. The Office of the Special Rapporteur received information on hostile comments made by senior government officials toward journalists and media. On October 31, former economy

¹⁵ Reporters Without Borders. October 12, 2011. *Salta broadcaster repeatedly sabotaged, other attacks on radio stations*. Available at: <http://en.rsf.org/argentina-salta-broadcaster-repeatedly-12-10-2011,41177.html>; Foro de Periodismo Argentino (FOPEA)/IFEX. October 6, 2011. *Fopea issues alert on intentional toppling of radio and television antenna in Salta*. Available at: http://www.ifex.org/argentina/2011/10/06/norte_vision_satelital/es/

¹⁶ El Tribuno. October 4. *Government manages security on February 20 Hill*. Available at: <http://www.eltribuno.info/salta/81140-El-Gobierno-gestiona-seguridad-en-el-cerro-20-de-Febrero.note.asp>

¹⁷ Informate Salta. September 30, 2011. *Orán journalists threatened by drug traffickers*. Available at: <http://www.informatesalta.com.ar/noticia.asp?q=29725>; Reporters Without Borders. October 4, 2011. *City in Salta rallies to defence of journalists threatened by drug traffickers*. Available at: <http://en.rsf.org/argentina-city-in-salta-rallies-to-defence-04-10-2011,41107.html>

¹⁸ El Día. November 8, 2011. *Attack on Junín newspaper La Verdad denounced*. Available at: <http://www.eldia.com.ar/edis/20111108/denuncian-ataque-diario-verdad-junin-laprovincia27.htm>; La Gaceta. November 8, 2011. *La Verdad in Junín attacked*. Available at: <http://www.lagaceta.com.ar/nota/464037/Politica/Ataque-Verdad-Junin.html>; El Entreríos. November 8, 2011. *Attackers try to set La Verdad in Junín on fire*. Available at: <http://elentrerios.com/index.php/sociedad/informacion-general/23474-quisieron-incendiar-el-diario-la-verdad-de-junin>

¹⁹ Infobae. November 4, 2011. *Jorge Lanata attacked*. <http://www.infobae.com/notas/615101-Agredieron-a-Jorge-Lanata.html>; Perfil. November 5, 2011. *Throw them at me*. Available at: http://www.perfil.com/ediciones/2011/11/edicion_624/contenidos/noticia_0020.html

minister and vice president-elect Amado Boudou accused newspapers *Clarín* and *La Nación* of "permanently (...) creating hostile environments" and called both media outlets "enemies of the government and enemies of Argentine interests," in an interview given to Radio Continental on the media's criticism of the government over efforts to decrease demand for dollars.²⁰

C. Impediments to the distribution of newspapers

24. The Office of the Special Rapporteur was informed of a series of incidents in which private parties blocked the entrances and exits to buildings where the newspapers *Clarín* and *La Nación* are printed, obstructing the newspapers' circulation. According to reports, the blockades carried out by union organizations took place on December 13 and 14, 2010, January 15, January 28, and March 27, 2011.²¹ While the companies claimed the protests were part of a campaign of harassment against the newspapers for their criticism of the government, the authorities expressed that the incidents were the result of an internal labor conflict. As a result of an *amparo* action brought by *La Nación*, on May 24, the Chief Justice of National Civil Court No. 64 handed down a restraining order that ordered the union organizations responsible for the blockades to "refrain from carrying out any 'blockade' and/or all other conduct that would imply blocking or obstructing the normal and regular entry and exit of people and goods to and from the printing facility of S. A. *La Nación*."²² Similar rulings to prevent blockades on *Clarín* were issued in December of 2010.²³ For its part, the government of the Autonomous City of Buenos Aires issued Necessary and Urgent Decree 2/11 punishing those who block or obstruct the operations of the media or attack or threaten its directors, journalists, workers or delivery persons with up to 10 days in prison and fines of up to 50,000 pesos (about US \$12,000 dollars).²⁴ In response to a request for information from this Office of the Special Rapporteur, the Argentine State reiterated its respect for freedom of expression and the press reflected in reforms like the one concluded on November 28, 2009, decriminalizing slander and defamation when matters of public interest are at issue. The State indicated that the incidents in the printing facilities of *Clarín* and *La Nación* originated from a union dispute, that the blockades did not prevent copies of the newspaper from going out for delivery, and that the State respects the right to assemble, and therefore avoids using repressive methods against social protests.²⁵

²⁰ Clarín. November 1, 2011. *For Boudou, "There have been attempts to cause collective hysteria."* Available at: http://www.ieco.clarin.com/economia/Boudou-intentos-generar-histeria-colectiva_0_583141709.html; La Nación. November 1. *Boudou accuses media over tension.* Available at: <http://www.lanacion.com.ar/1419486-boudou-acuso-a-los-medios-por-la-tension>

²¹ Committee to Protect Journalists. March 29, 2011. *Argentina should halt obstruction of top dailies.* Available at: <http://cpj.org/2011/03/argentina-should-halt-obstruction-of-top-dailies.php>; Inter-American Press Association (IAPA). January 17, 2011. *IAPA concerned at renewed blockade of Argentine newspapers.* Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4508&idioma=us; La Nación. December 15, 2010. *Delivery of La Nación and Clarín delayed.* Available at: <http://www.lanacion.com.ar/1333721-atrasan-la-salida-de-la-nacion-y-clarin>

²² Judicial Branch of the Nation. May 24, 2011. *Ruling prevents "blockades" to printing facility of newspaper La Nación.* Available at: <http://www.cij.gov.ar/nota-6864-Fallo-impide--bloqueos--a-la-planta-impresora-del-diario-La-Nacion.html>

²³ La Nación. January 2, 2011. *Blockade of printing facility prohibited.* Available at: <http://www.lanacion.com.ar/1338068-prohiben-bloquear-una-planta-impresora>; Knight Center for Journalism in the Americas. January 3, 2011. *Argentine judge bars protesters from blocking news printer.* Available at: <http://knightcenter.utexas.edu/blog/argentine-judge-bars-protesters-blocking-news-printer>

²⁴ Government of the Autonomous City of Buenos Aires Boletín Oficial. April 11, 2011. *Necessary and Urgent Decree No. 2/11.* Available at: <http://www.scribd.com/doc/52874010/Decreto-libertades-de-prensa-y-expresion>; City of Buenos Aires. April 12, 2011. *En defensa de la libertad de expresión y de prensa, Macri fijó penas por decreto para quienes atenten contra ellas.* Available at: http://www.ccgsm.gov.ar/noticias/?modulo=ver&idioma=es&item_id=10337&contenido_id=56208

²⁵ Permanent Mission of the Argentine Republic to the Organization of American States. Received on May 16, 2011. OEA 174.

25. On April 3, a blockade by newspaper delivery people obstructed the distribution of the newspapers *La Voz del Interior* and *Día a Día de Córdoba*. According to the information, the group of delivery people positioned themselves in the exits and entrances of the building where the newspapers are printed. Intervention by the authorities was able to lift the blockade by midday; however, according to the information received, close to 70% of the day's edition was not distributed. The protest was based on the delivery peoples' complaints over print run delays that made their job more difficult.²⁶

D. Prior conditioning

26. At the time this report went to press, a bill from the Executive Branch submitted in 2010 that proposes declaring the production, commercialization and distribution of newsprint to be in the public interest is still being processed in Congress.²⁷ As this office indicated in its 2010 report, issues related to newsprint are of such importance for the inter-American system that Article 13 itself of the American Convention establishes that, "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. In this sense, it is important that existing anti-monopoly rules be applied to newsprint production in such a way as to foment its free production. This regimen must be defined by the legislative branch, with special attention given to the obligation to prevent the existence of abusive government or private sector controls. In particular, it is important to take into account that the pretext of regulating monopolies cannot end up creating a form of intervention that allows the State to affect this sector in any way other than to prevent the concentration of property and control of production and distribution of this input and to facilitate free and competitive paper production. The Office of the Special Rapporteur hopes that given its notable importance for the exercise of freedom of expression, the matter mentioned herein is resolved in keeping with international standards on the subject.

27. The Office of the Special Rapporteur was informed of concern among private sector media with regard to the absence of established standards for placing government advertisement and the increase in the budget for this advertisement, which in 2010 rose to 1.225 billion pesos, 47.7% higher than the previous year.²⁸ However, with regard to this, on March 2, 2011, the

²⁶ Argentine Journalism Forum (FOPEA in its Spanish acronym). April 8, 2011. *FOPEA concerned over blockade of newspapers La Voz del Interior and Día a Día*. Available at: http://www.ifex.org/argentina/2011/04/08/bloqueo_vendedores/es/; Perfil.com. April 3, 2011. *Newspapers La Voz del Interior and Día a Día blockaded*. Available at: http://www.perfil.com/contenidos/2011/04/03/noticia_0011.html; La Voz Noticias. April 3, 2011. *Unanimous rejection of blockade that prevented distribution of La Voz and Día a Día*. Available at: <http://www.lavoz.com.ar/noticias/politica/unanime-rechazo-al-bloqueo-que-impidio-salida-voz-dia-dia>

²⁷ According to the bill passed in committee, the production of paper for newspapers would be considered "in the public interest," an "equitative final price" is established for all domestic newspapers, and a regulatory body is created under the Executive Branch. Also, the bill mandates that no company that holds more than a 10% share in a print or audio-visual media company can own a company that produces newsprint. As of the publication deadline of this report, the recommendation by the Commission has not been addressed by the Chamber of Deputies. Honorable Chamber of Deputies of the Nation. Bill to declare the production, commercialization and distribution of newsprint in the public interest. File 7381-D-2010. Published in Parliamentary Proceeding No. 150. October 7, 2010. Available at: (Proyectos-Búsqueda general) <http://www.diputados.gov.ar/>; Inter-American Press Association (IAPA). October, 2011. *Information by Country: Argentina*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=819&idioma=us

²⁸ Poder Ciudadano. December 3, 2011. *Dimensions of Government Advertising in Argentina*. Available at: <http://poderciudadano.org/2011/12/dimension-de-la-publicidad-oficial-en-la-argentina/>. According to this report, the federal government spent \$829 million pesos on official publicity in 2009 and \$1,224,700 pesos in 2010.

Supreme Court of Justice had already handed down a ruling reiterating the State obligation to adopt a government advertising policy that is nondiscriminatory and uses objective standards.²⁹

28. The Office of the Special Rapporteur was informed that radio broadcasters *FM Norte* and *FM Futuro*, in Pampa del Infierno, Chaco province, were searched and had their equipment confiscated on December 30 and 31, 2010, in compliance with an order issued by a justice of the peace in Pampa del Infierno. In addition, on December 31, Claudio Herrera - the owner of *FM Norte*, and Raúl Gerardo Abregu, an employee of *FM Futuro*, were arrested after they tried to go back to broadcasting. They were both released on January 3 and 4, 2011. The court order was based on an application of the Misdemeanor Code of the province of Chaco, which punishes those who distribute false information or information that "it is unfair to a person or institution" with jail time of up to 120 days. The action against the broadcasters took place after they insisted they knew the source of special funds received by the Pampa del Infierno Municipality.³⁰ On February 17, a judge in Campo Largo overturned the measure issued by the judge in Pampa del Infierno and ordered the equipment returned.³¹

29. On September 15, National Criminal Economic Court No. 4 asked newspapers *Clarín*, *El Cronista*, *La Nación* and *Ámbito Financiero* to provide the names, addresses and telephone numbers of the journalists who had published articles in those newspapers from 2006 to the present on inflation indices in Argentina that differed from the numbers provided by government agencies. In addition, the court asked the newspapers to report if whether during that same period of time they had invoiced spaces for two people and the company being investigated by the State for publishing inflation figures that differed from the ones published by the government.³² The Office of the Special Rapporteur takes note of the important controversy sparked by this decision regarding the exercise of the right to freedom of expression. On one hand, some organizations, after emphasizing the importance of protecting the confidentiality of their source, argued that the judge in the case is investigating the crime of speculation via false news items and thus ordered certain newspapers to report if companies that had provided them with economic indicators different from the ones the government provides had paid for the publication of certain information. In this sense, they indicated that no legal provision excuses journalists from testifying as witnesses.³³ On the

²⁹ Regarding this subject, see IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). Para. 46 *et seq.* Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

³⁰ Article 59 subparagraph G) of the chapter entitled "misdemeanors against public reputation" of the Misdemeanor Code of the province of Chaco establishes that: "They will be punished with up to 20 days in jail or cash fine equivalent to up to 20 monthly minimum wages, food and transportation those G) who, through through the written, oral or televised media distribute false news items to the population on some fact or circumstance tending to be unfair to a person or institution, as long as it is not qualified as a crime." Chamber of Deputies of Chaco. Republic of Argentina. Law 42019. Misdemeanor Code. Available at: <http://legislatura.chaco.gov.ar/InformacionLegislativa/datos/textos/word/00026269.DOC>; Argentine Journalism Forum (FOPEA). January 18, 2011. *Judge uses Misdemeanor Code to order searches and arrests at two broadcasters*. Available at: http://www.ifex.org/argentina/2011/01/18/pampa_del_infierno/es/

³¹ Radiodifusióndata. February 27, 2011. *Equipment confiscated from two radio stations in Pampa del Infierno returned*. Available at: <http://www.radiodifusiondata.com.ar/2011/feb11/fm-pampadelinfierno-decomiso.htm>

³² National Criminal Economic Court. Note to manager in charge of legal issues for newspaper Clarín. September 15, 2011. Available at: <http://www.clarin.com/politica/inflacion-juez-Catania-consultoras-privadas-indices-alternativos-Guillermo-Moreno-periodistas-0-559144275.html>; *La Nación*. September 23, 2011. *Consultants keep a low profile*. Available at: <http://www.lanacion.com.ar/1408523-las-consultoras-se-aferran-al-bajo-perfil>; Argentine Journalism Forum (FOPEA)/IFEX September 22, 2011. *FOPEA concerned over scope of judicial request regarding journalists covering economic issues*. Available at: http://www.ifex.org/argentina/2011/09/27/pedido_judicial/es/

³³ Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS). September 23, 2011. *Posición del CELS frente al pedido de información sobre periodistas realizado por el juez Alejandro Catania*. Available at: <http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=&idc=1434>

other hand, other organizations questioned the court summons. According to them, these are unnecessary investigations and summonses that should be approached by making the official inflation indices as transparent and trustworthy as possible.³⁴ In this regard, the Office of the Special Rapporteur considers it important to recall that all investigations must respect source confidentiality as an essential guarantee for the free exercise of journalism, as well as the obligation to respect the distribution of information even when it is offensive or contrary to the interests of public servants and the obligation of the media to submit itself to strict ethical standards that can in no case be imposed by the State.

E. Access to information

30. The Office of the Special Rapporteur observes with concern that during 2011, the Chamber of Deputies neither discussed nor voted on the Access to Information Act, which had been passed by the Senate in September of 2010.³⁵

31. According to information received, the government of the City of Buenos Aires did not respond to a request submitted by a nongovernmental organization for information on spending on government advertising between January and May of 2011. According to the information, as of the expiration of the legal deadline to respond, the city government had not requested the deadline extension provided for in the law regulating access to public information and maintained its silence. The petitioner organization submitted an action of *amparo* before the Contentious, Administrative and Tax Jurisdiction of the City of Buenos Aires.³⁶

32. Principle 4 of the Declaration of Principles of the IACHR establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

2. Bolivia

A. Developments

33. According to information received, on June 10 the Office of the Public Prosecutor reportedly issued Resolution 0902317 ordering the dismissal of charges against Daniel Villavicencio, of the newspaper *Correo del Sur*, and independent television reporter Mario Delfin Ustarez, for the offenses of publicly instigating a crime and advocating crime. The dismissal was based on insufficient evidence. The journalists were reportedly accused of instigating acts of violence that took place in Sucre on May 24, 2008 against indigenous persons and peasant farmers.

³⁴ Forum for Argentinian Journalism (Foro de Periodismo Argentino, FOPEA)/IFEX. September 22, 2011. *Preocupación de FOPEA por los alcances de un pedido judicial acerca de periodistas que cubren temas económicos*. Available at: http://www.ifex.org/argentina/2011/09/27/pedido_judicial/es/; Poder Ciudadano. September 23, 2011. *Las consecuencias de no tener estadísticas confiables*. Available at: <http://poderciudadano.org/2011/09/las-consecuencias-de-no-tener-estadisticas-confiables/>

³⁵ Regional Alliance for the Freedom of Expression and Access to Information. October 24, 2011. *Regional State Report on the Situation of Access to Public Information*. P. 15. Available at: http://www.adc.org.ar/sw_contenido.php?id=851; El Cívico. November 20, 2011. *More than 500 bills will not pass due to the low number of sessions in the Chamber of Deputies in 2011*. Available at: <http://www.elcivico.com/notas/2011/11/20/proyectos-caeran-pocas-sesiones-camara-diputados-76384.asp>

³⁶ Association for Civil Rights (ADC according to its Spanish acronym). July 15, 2011. *Buenos Aires government does not turn over information on official advertising*. Available at: http://www.adc.org.ar/sw_contenido.php?id=836

Nevertheless, the Office of the Public Prosecutor reportedly found sufficient evidence to proceed against Roger González, director of *Canal 13 Televisión Universitaria*.³⁷

34. The Office of the Special Rapporteur notes that the Office of the District Prosecutor of Potosí declined jurisdiction to prosecute journalist Mario Caro Martínez, of *Radio Kollasuyo*, for the alleged offense of *desacato* [criminal defamation] on April 5, 2011. The criminal complaint was reportedly filed in March by Felipe Castro, the former Secretary of the Environment of the departmental government of Potosí, after the journalist published information about alleged irregularities in that secretary's office. According to the information available, the Prosecutor's Office declined jurisdiction on grounds that the Press Law, according to which public servants attacked in the press must bring their claims before a Press Jury and not before a regular court, is fully in force.³⁸

B. Assaults and threats

35. The Office of the Special Rapporteur learned of the violent death of journalist David Niño de Guzmán. According to the information received, the journalist had disappeared on the night of Tuesday, April 19, when he left his apartment after having received a phone call. His body was found on Thursday, April 21 in a riverbed in La Paz, destroyed by an explosive charge. David Niño, 42, was the News Editor at *Agencia de Noticias Fides*, a media outlet affiliated with the Company of Jesus, of the Catholic Church in Bolivia. He had worked for over 15 years with various Bolivian media, such as *Presencia*, *Última Hora*, *La Razón* and *El Diario*.³⁹ The State informed the Office of the Special Rapporteur that the government of President Evo Morales had reportedly ordered an exhaustive and immediate investigation of the tragic incident.⁴⁰ On August 8, the Office of the Public Prosecutor requested that the case be closed. It considered the journalist's death to be a suicide, based on the examination of the evidence gathered and the forensic reports.⁴¹ However, the

³⁷ Correo del Sur. August 11, 2011. *Fiscalía admite que no hay pruebas contra periodistas*. Available at: <http://www.correodelsur.com/2011/0811/37.php>; Los Tiempos. August 10, 2011. *Acusan formalmente a periodista en Sucre por instigar hechos racistas*. Available at: <http://www.lostiempos.com/diario/actualidad/nacional/20110810/acusan-formalmente-a-periodista-en-sucre-por-instigar-hechos-137264-280515.html>; National Press Association. Undated. Alert No. 113-2011. *Periodista podría ser juzgado en la vía ordinaria*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=282&Itemid=28

³⁸ Knight Center for Journalism in the Americas. March 14, 2011. *Periodista boliviano es acusado de desacato por difundir información sobre autoridades públicas*. Available at: <http://knightcenter.utexas.edu/es/blog/periodista-boliviano-es-acusado-de-desacato-por-difundir-informacion-sobre-autoridades-publicas>; FM Bolivia. April 8, 2011. *Fiscal reconoce vigencia de la Ley de Imprenta*. Available at: <http://www.fmbolivia.com.bo/noticia50482-fiscal-reconoce-vigencia-de-la-ley-de-impresion.html>; National Press Association (ANP)/IFEX. March 11, 2011. *Procesan a periodista en Potosí*. Available at: http://ifex.org/bolivia/2011/03/11/caro_martinez/es/; ANP/IFEX. April 12, 2011. *ANP celebra decisión del fiscal en caso de periodista que enfrentaba querrela por desacato*. Available at: http://www.ifex.org/bolivia/2011/04/12/declinado_competencia/es/; Los Tiempos. Undated. *Press Law of January 19, 1925*. Available at: http://www.lostiempos.com/media_pdf/2010/10/05/178909_pdf.pdf

³⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 29, 2011. Press Release R36/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Violent Death of Journalist in Bolivia*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=838&IID=2>; Committee to Protect Journalists (CPJ). April 22, 2011. *Hallaron muerto a un periodista boliviano*. Available at: <http://cpj.org/es/2011/04/hallaron-muerto-a-un-periodista-boliviano.php>; National Press Association (ANP)/IFEX. April 25, 2011. *Periodista aparece muerto*. Available at: http://www.ifex.org/bolivia/2011/04/25/nino_de_guzman_killed/es/; Public University of El Alto (UPEA). April 12, 2011. *David Niño de Guzmán era parte de la UPEA*. Available at: <http://www.enlaupea.com/2011/04/david-nino-de-guzman-era-parte-de-la.html>

⁴⁰ Communication from the Permanent Mission of the Plurinational State of Bolivia to the OAS. April 28, 2011. OEA-CIDH-083-11.

⁴¹ Bolivian News Agency (ABI). August 9, 2011. *Fiscalía considera que periodista Niño de Guzmán se suicidó y pide archivo de obrados*. Available at: <http://www2.abi.bo/nucleo/noticias.php?i=2&j=20110809062001>; La Razón. August 8, 2011. *Fiscalía concluye que periodista David Niño de Guzmán se suicidó*. Available at: <http://www.la-razon.com/version.php?ArticleId=135261&EditionId=2615>

companion of David Niño requested that the investigation be reopened.⁴² The Prosecutor's Office reportedly denied the complaint; however, if there is any new evidence in the case within one year, it may be reopened.⁴³

36. The Office of the Special Rapporteur received information about several assaults carried out against journalists while they covered social protests. On April 15, in Apacheta, on the Altiplano 20 kilometers from La Paz, a group of journalists were reportedly beaten by police officers and protesters during their coverage of confrontations between teachers and the police. According to reports, police attacked cameraman Israel Gutiérrez of *Red Uno*; cameraman Carlos Saavedra of *Bolivisión*; and Henry Ponce, a photographer from the newspaper *Página Siete*. The first two reportedly had their equipment destroyed, and Ponce—who was allegedly struck with the butt of a rifle—was reportedly forced to turn over two photographic memory cards containing hundreds of images. The protesters, for their part, reportedly attacked cameraman Vladimir Rojas of *Universal de Televisión*, and photographer Juan Mamani Karita, of *AP* (the Associated Press), whose photographic equipment they allegedly stole and destroyed. On April 19, Vice President Álvaro García Linera apologized for the physical and verbal police attacks on the media workers.⁴⁴

37. On January 18, two municipal employees of the city of El Alto reportedly struck journalist Rosío Flores of *El Diario* of La Paz, when she sought information regarding an alleged irregular act that took place in the municipal council. Following this attack, the newspaper filed a criminal complaint of assault.⁴⁵ On February 14, milk producers reportedly assaulted José Rocha, a photographer for the newspaper *Los Tiempos*, *Tele C* journalist Verónica Sarmiento, and *Red Uno* cameraman Marcelo Dalence, while they were covering a protest across from a milk processing plant in Cochabamba.⁴⁶ In Lomas de Andalucía, Cochabamba, on March 6, alleged squatters reportedly kicked and hit with sticks and stones at least five journalists and media workers from the newspaper *Los Tiempos* and from the television stations *Red Uno* and *Univalle*.⁴⁷

⁴² Los Tiempos. August 30, 2011. *Piden la reapertura del caso Niño de Guzmán*. Available at: http://www.lostiempos.com/diario/actualidad/nacional/20110808/piden-la-reapertura-del-caso-nino-de-guzman_136980_279882.html; Knight Center for Journalism in the Americas. August 10, 2011. *Piden reapertura de caso de periodista suicida en Bolivia*. Available at: <http://knightcenter.utexas.edu/es/blog/piden-reapertura-de-caso-de-periodista-suicida-en-bolivia>

⁴³ Opinión. August 7, 2011. *Fiscalía cree que David Niño de Guzmán se quitó la vida*. Available at: <http://www.opinion.com.bo/opinion/articulos/2011/0807/noticias.php?id=20679>; Los Tiempos. August 30, 2011. *Piden la reapertura del caso Niño de Guzmán*. Available at: http://www.lostiempos.com/diario/actualidad/nacional/20110808/piden-la-reapertura-del-caso-nino-de-guzman_136980_279882.html

⁴⁴ National Association of Journalists (ANP)/IFEX. April 19, 2011. *Periodistas fueron golpeados por policías y manifestantes*. Available at: http://www.ifex.org/bolivia/2011/04/19/apacheta_periodistas_golpeados/es/; Reporters Without Borders. April 19, 2011. *Cinco periodistas fueron agredidos por la policía y manifestantes*. Available at: http://es.rsf.org/bolivia-cinco-periodistas-fueron-agredidos-19-04-2011_40056.html; National Association of Journalists (ANP)/IFEX. April 25, 2011. *Vicepresidente pide disculpas por agresiones, pero no anuncia sanciones*. Available at: http://www.ifex.org/bolivia/2011/04/25/apacheta_disculpas/es/

⁴⁵ National Association of Journalists (ANP)/IFEX. January 24, 2011. *Periódico anuncia querrela penal por agresión a una de sus periodistas*. Available at: http://www.ifex.org/bolivia/2011/01/24/flores_assaulted/es/; El Diario. January 23, 2011. *Prensa cruceña repudia ataque a periodista de El Diario*. Available at: http://www.eldiario.net/noticias/2011/2011_01/nt110123/O_03ptd.php

⁴⁶ National Association of Journalists (ANP)/IFEX. February 17, 2011. *Lecheros apedrean a tres periodistas*. Available at: http://www.ifex.org/bolivia/2011/02/17/cochabamba_assault/es/; FMBolivia. February 17, 2011. *Lecheros apedrean a tres periodistas bolivianos*. Available at: <http://www.fmbolivia.com.bo/noticia46784-lecheros-apedrean-a-tres-periodistas-bolivianos.html>

⁴⁷ Televisión, Radio y Periódicos. March 9, 2011. *Loteadores apalean a periodistas y camarógrafos*. Available at: <http://televisionenbolivia.blogspot.com/2011/03/loteadores-apalean-periodistas-y.html>; National Association of Journalists (ANP)/IFEX. March 10, 2011. *Ocupantes de tierras agreden a periodistas*. Available at: http://www.ifex.org/bolivia/2011/03/10/los_tiempos_attacks/es/

38. The Office of the Special Rapporteur was informed of several assaults on journalists from state and private media on September 25 and 28, during the coverage of the indigenous march against the building of a highway that would cut through protected parkland. As stated in the reports received, at least a dozen media workers were reportedly assaulted, threatened, or intimidated, in some cases by protesters and in others by police officers. Laura Ibáñez, Franco Colchani, David Alanoca and Raúl Crespo, of the state-run *Canal 7*, were reportedly beaten by opponents of the Government, while Bernabé López, of the *PAT* television network, Ramiro Amaru, of *Radio Fides* and reporters from the Confederation of Indigenous Peoples of Bolivia were reportedly intimidated and physically pushed away from the scene by police. In addition, César Tamayo, of *Radio Fides*; Jorge Figueroa, of the *Erbol* network, and photographer Samy Schwartz were reportedly assaulted by protesters who attempted to block the march.⁴⁸

39. The Office of the Special Rapporteur learned that journalist Carlos Torres reportedly received death threats on January 3 and January 9 in the city of Sucre. Torres is a correspondent for *Radio Panamericana*, and the Secretary General of the Federation of Press Workers' Unions of Chuquisaca. The intimidating messages were reportedly related to Torres' organization of protests against two articles of the Law against Racism and All Forms of Discrimination. The journalist reported the threats to the police and the authorities promised to thoroughly investigate the calls and messages.⁴⁹

40. According to information received, journalist Mónica Oblitas reportedly received numerous anonymous threats beginning in April with telephone calls, text messages, and emails, after publishing an investigative piece in the newspaper *La Prensa* on April 3. The article exposed the alleged sale of false forensic certificates to individuals who were the alleged victims of violent acts.⁵⁰

41. The ninth principle of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the

⁴⁸ National Press Association (ANP). Undated. Alert No 97-2011. *Canal estatal de TV denuncia agresiones a sus periodistas*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=268&Itemid=28; National Press Association (ANP)/IFEX. October 5, 2011. *Policías agreden a periodistas y camarógrafos, detienen a marchistas*. Available at: <http://www.ifex.org/bolivia/2011/10/05/periodistas-agredidos/es/>; FM Bolivia. September 27, 2011. *Bolivia TV denuncia intento de linchamiento a su periodista*. Available at: <http://www.fmbolivia.com.bo/noticia64467-bolivia-tv-denuncia-intento-de-linchamiento-a-su-periodista.html>; Noticias BO. October 5, 2011. *Periodistas agredidos y amenazados en Bolivia*. Available at: <http://www.noticiasbo.com/noticia/periodistas-agredidos-y-amenazados-en-bolivia-.html>; EA Bolivia. September 28, 2011. *Federación de periodistas rechaza exceso policial y crítica desinformación de medios*. Available at: <http://www.eabolivia.com/social/9434-federacion-de-periodistas-rechaza-exceso-policial-y-critica-desinformacion-de-medios.html>; National Press Association (ANP)/IFEX. September 19, 2011. *Periodista golpeado por bloqueadores de marcha indígena*. Available at: <http://www.ifex.org/bolivia/2011/09/19/tamayo-lesiones/es/>

⁴⁹ On January 3, the journalist received a text message that read: "Death. If you keep lying and saying that you have gathered 1 million signatures, I'm going to pay a *chorro* [criminal] to pump you full of lead. Watch out, liar." The January 9 messages said: "If you're still talking to the media about the regulations to the Anti-racism Law, you had better shut up, because your death is near;" "Death. I'm going to kill you with a cap to the head. Don't complicate your life. It's better you resign as a leader of the sell-out press." *La Patria*. January 14, 2011. *Periodista presentó denuncia en la Fiscalía por amenazas de muerte*. Available at: <http://www.lapatriaenlinea.com/?nota=55129>; Correo del Sur. January 12, 2011. *Amenazan de muerte a periodista de Sucre*. Available at: <http://correodelsur.com/2011/0112/34.php>

⁵⁰ Committee to Protect Journalists (CPJ). September 12, 2011. *Periodista boliviana quien investigó corrupción es amenazada*. Available at: <http://cpj.org/es/2011/09/periodista-boliviana-quien-investigo-corrupcion-es.php>; Reporters Without Borders. September 15, 2011. *RSF pide protección para Mónica Oblitas*. Available at: <http://www.rsf-es.org/news/bolivia-rsf-pide-proteccion-para-monica-oblitas/>

state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Arrests and judicial proceedings

42. On January 17, judicial authorities reportedly ordered the arrest of journalist Luis Zabala Farell, for allegedly using the radio station *La Voz del Pueblo* to incite a group of residents to attack the police post of Minero in Santa Cruz de la Sierra on January 6. According to reports, the journalist turned himself in voluntarily to the police to explain what happened and to face charges of attempted murder, public instigation to commit a crime, criminal conspiracy, and aggravated robbery; nevertheless, an investigating judge ordered his pretrial detention because he was considered to be a flight risk. On April 14, the journalist was granted conditional release, but was prohibited from speaking about the case.⁵¹ A court of first instance acquitted Zabala of all of the charges, and on September 26 the acquittal was affirmed on appeal.⁵²

43. The Office of the Special Rapporteur received information about several accusations of *desacato*. On July 18, journalist Richard Romero Cossío was reportedly arrested in La Paz and charged with *desacato* for producing and selling a video entitled “The trade union dictatorship” about the Bolivian president’s background as a social leader. According to the information received, a magistrate’s court for criminal matters reportedly set the journalist’s bond at 5,000 bolivianos (US \$750) and granted supervised pretrial release. The terms of release required him to report to the court once a week, and prohibited him from voicing “defamatory words that may denigrate the character of the president and other authorities.”⁵³ The Criminal Code of Bolivia imposes a term of imprisonment ranging from one month to two years against any person who “through any medium, libels, slanders, or defames a public servant in the performance of his duties or as a result thereof.”⁵⁴ In November, a bill was introduced to decriminalize the offense of *desacato*.⁵⁵

44. According to the eleventh principle of the IACHR’s Declaration of Principles on Freedom of Expression “Public officials are subject to greater scrutiny by society. Laws that penalize

⁵¹ Andean Group for Freedom of Information (EL GALI). May 24, 2011. *Periodista boliviano dejó de trabajar para reunir pruebas que le restituyan libertad plena en un juicio*. Available at: <http://www.elgali.org/monitoreo/bolivia/periodista-boliviano-dejo-trabajar-reunir-pruebas-que-le-restituyan-libertad-ple-0>; El Diario. April 16, 2011. *Periodista pese a estar libre no puede declarar sobre su proceso*. Available at: http://www.eldiario.net/noticias/2011/2011_04/nt110416/5_13nal.php; Knight Center for Journalism in the Americas. April 20, 2011. *Bolivian journalist freed after three months in jail but barred from discussing case*. Available at: <http://knightcenter.utexas.edu/blog/bolivian-journalist-freed-after-three-months-jail-barred-discussing-case>

⁵² National Press Association(ANP)/ IFEX. October 7, 2011. *Radialista levanta autocensura tras fallo a su favor*. Available at: http://www.ifex.org/bolivia/2011/10/07/radialista_levanta_autocensura/es/; El Diario. October 7, 2011. *Radialista levanta autocensura*. Available at: http://www.eldiario.net/noticias/2011/2011_10/nt111007/2_09plt.php

⁵³ National Press Association (ANP)/IFEX. July 22, 2011. *Policía aprehende a individuo que vendía video sobre el presidente*. Available at: http://www.ifex.org/bolivia/2011/07/22/cossio_aprehendido/es/; Andean Group for Freedom of Information (EL GALI). July 24, 2011. *Aprehenden a un periodista acusado de difundir un video que afecta la imagen del presidente boliviano*. Available at: <http://www.elgali.org/monitoreo/bolivia/aprehenden-un-periodista-acusado-difundir-un-video-que-afecta-la-imagen-del-presid>; Unitel. July 20, 2011. *Periodista preso por producir documental denunciando a gobierno de Evo Morales*. Available at: <http://www.youtube.com/watch?v=xmVqRkYtBxo&feature=related>; Opinión. July 20, 2011. *Gobierno presenta querrela contra supuesto periodista por desacato*. Available at: <http://www.opinion.com.bo/opinion/articulos/2011/0720/noticias.php?id=18328>

⁵⁴ See Criminal Code of Bolivia. Article 162. Available at: http://www.oas.org/juridico/spanish/gapeco_sp_docs_bol1.pdf

⁵⁵ Autonomous Departmental Government of Santa Cruz. November 22. *Gobernador presenta proyecto de ley para derogar el desacato de la legislación boliviana*. Available at: <http://ftp.santacruz.gob.bo/prensa/notas/contenido.php?IdNoticia=6456&IdMenu=901>

offensive expressions directed at public officials, generally known as ‘*desacato laws*,’ restrict freedom of expression and the right to information.”

45. According to information received, on July 11, in the city of Cobija, the departmental capital, two public servants from the office of the governor of Pando reportedly confiscated 2000 copies of issue number 22 of the newspaper *Sol de Pando*, which contained information critical of the governor; they also reportedly intimidated the newspaper’s circulation manager.⁵⁶ Legal counsel from the governor’s office reportedly explained that the two public servants had taken the copies in order to try to distribute them themselves, as both had ties to the newspaper. The publication denied the government’s version of the events, demanded that the governor’s office return the copies, and reported the confiscation to the National Ombudsman, the justice system, and journalistic organizations.⁵⁷

D. Legislative reforms

46. On January 5, the Government issued an executive order approving the regulations to the Law against Racism and All Forms of Discrimination, which provide for the suspension of media outlets that disseminate racist ideas. The suspension period ranges from 10 to 360 days depending on the degree and repercussions of noncompliance with the Law.⁵⁸ The maximum period of suspension would apply only in the case of repeated recurrence, on three or more occasions. The regulations did not include the possibility of permanently shutting down a media outlet. The regulations specify that racist and discriminatory messages do not give rise to liability on the part of a medium when they are published or disseminated as part of a news report without there being any defense of or praise for acts of racism, or when they are the result of third-party expressions broadcast on live programs or programs in which there is public participation, in which case the media outlet must caution the public to refrain from using such expressions.⁵⁹ A media outlet will not be liable when a racist expression is uttered on independent paid programming, but it has the obligation to issue a warning for the infraction and prevent it from being repeated.⁶⁰ The regulations additionally require the media to bring their internal rules into line with the “recognition [of, and] respect for differences, and the promotion of principles, values, and standards to eradicate racist

⁵⁶ National Press Association (ANP)/IFEX. July 29, 2011. *Periódico acusa a gobernador de Pando de confiscar dos mil ejemplares de una de sus ediciones*. Available at: http://www.ifex.org/bolivia/2011/07/29/sol_de_pando_confiscated/es/; El Diario. August 3, 2011. *Autoridades impiden circulación de publicación sin tuición alguna*. Available at: http://www.eldiario.net/noticias/2011/2011_08/nt110803/2_04plt.php

⁵⁷ Opinión. August 6, 2011. *Gobernación: dos empleados secuestraron la edición del Sol de Pando*. Available at: <http://www.opinion.com.bo/opinion/articulos/2011/0806/noticias.php?id=20548>; Sol de Pando. July 31, 2011. *Carta a la CSTPB. Ante los ataques violentos de Richard Flores Roberts, hermano del gobernador: Tribunal de Imprenta*. Available at: http://soldepando.blogspot.com/2011_07_01_archive.html; La Razón. July 30, 2011. *Sol de Pando se querrela contra Flores*. Available at: <http://www.la-razon.com/version.php?ArticleId=134691&EditionId=2606>; Sol de Pando. August 26, 2011. *Denuncia de Sol de Pando al Defensor del Pueblo*. Available at: <http://soldepando.blogspot.com/2011/08/denuncia-de-sol-de-pando-al-defensor.html>

⁵⁸ See Article 17, Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>

⁵⁹ See Article 16, Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>

⁶⁰ Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>; La Razón. January 5, 2011. *El Gobierno aprobó la reglamentación de la ley antirracismo*. Available at: <http://www.la-razon.com/version.php?ArticleId=123501&EditionId=2398>

conduct and all forms of discrimination,” as well as to disseminate specific quantities of their own communications, according to the type of media, with this objective.⁶¹

47. The Office of the Special Rapporteur considers the progress made through this regulatory order to be essential. Also, it finds that it would be appropriate for those provisions to be given the force of law, in order to ensure their stability and status. In this respect, in its last annual report, the Office of the Special Rapporteur noted that some provisions of that Law “are of concern” and that it was necessary to create the essential legal safeguards to satisfy both the right to equality and nondiscrimination and the right to freedom of expression.⁶² In addition, the Office of the Special Rapporteur finds it important to clarify the system of penalties in order to ensure proportionality in the event that they are imposed.⁶³

48. The Office of the Special Rapporteur learned of the May 26 approval by a majority of the House of Representatives of the amendments to Article 82 of the Electoral System Law. The amendments repealed the provisions according to which candidates were prohibited from giving interviews to the media or expressing their opinions in “public forums, meetings, or other similar events,” and the media were prevented from disseminating any documents other than those put out by the Electoral Body, or referring to candidates positively or negatively.⁶⁴ According to the information received, the amendment allows candidates to the Judicature Council, the Plurinational Constitutional Court, the Supreme Court of Justice, and the Agro-environmental Court to take part in interviews or events held by the media or in “public spaces,” provided that they refrain from “campaigning or propagandizing,” “directly or indirectly”; “issuing an opinion” in their favor, or for or against other candidates; or “directing or hosting radio or television programs or writing news or opinion columns in the press.” President Evo Morales proposed changing the Law, and the amendment was passed on May 27. The Office of the Special Rapporteur takes note of these important changes that respond to the need for candidates to be heard prior to elections. Notwithstanding, there are still ambiguous prohibitions like those that keep the media from “creating opinion spaces of any type with regard to the candidates.”⁶⁵ Following the elections, journalistic

⁶¹ Article 13(2) provides that the media are required to “promote acts of prevention and education meant to safeguard respect for the dignity and equality of all persons, through the production of their own communications products, in official and alternative languages according to the region and audience” and requires that they be disseminated, at preferential times: 1) at least 20 minutes per month on television channels; 2) at least 40 minutes per month on radio stations; 3) at least one page per month in newspapers and at least half a page per month in magazines; and 4) at least one “space” per month in digital newspapers on the Internet. (“promover las acciones de prevención y educación destinadas a precautelar el respeto a la dignidad e igualdad de todas las personas, mediante la elaboración de productos comunicacionales propios, en idiomas oficiales y alternativos de acuerdo a la region y audiencia.”). Art. 13(2), Official Gazette of the Plurinational State of Bolivia. January 5, 2011. *Supreme Decree 0762 regulating the Law against Racism and All Forms of Discrimination*. Available at: <http://helpdesk.aduana.gob.bo:8010/publicar/documentos/CIRCULAR/gestion2011/mes1/CIR%202011-003.PDF>

⁶² IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 53. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁶³ IACHR. 2010 Annual Report. OEA/SER.L/V/II. Doc.5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 53 et seq. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁶⁴ See Electoral System Law. Law No. 026 of June 30, 2010. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=1888>. Cf. Law No. 125 of May 27, 2011. Available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/listadonor/10/page:2> (repealing sections (a) and (b) of Paras. II and IV of Article 82, and amending section (d))

⁶⁵ Plurinational Legislative Assembly. House of Representatives. May 26, 2011. *Modificaciones a la Ley 026 garantizan participación de candidatos en medios de comunicación*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=405:modificaciones-a-ley-026-garantizan-

organizations deplored the existing restrictions and the lack of information, which reportedly made it impossible to freely interview the 118 candidates for offices up for election.⁶⁶

49. The Office of the Special Rapporteur takes note of the August 8 enactment of the new Telecommunications, Information Technology and Communication Law, which was passed by the Senate on July 28, and by the House of Representatives on July 22.⁶⁷ According to the information received, the law provides for the allocation of frequencies among state, commercial, and community broadcasters, and the “native indigenous peoples, peasants, [and] intercultural and Afro-Bolivian communities.”⁶⁸ It thus recognizes the importance of the plurality and diversity that must exist in broadcasting. Also, and consistent with the spirit of the law and with international standards, the State must establish technical mechanisms to ensure the independence and autonomy of social and community radios and channels. In this respect, in its general report on broadcasting, the Office of the Special Rapporteur has already stated, *inter alia*, that, “The right to freedom of expression requires that the States not only refrain from performing acts that prevent the exercise of the right but also take measures to guarantee its exercise under conditions of equality and nondiscrimination,” that “in particular, community media are fundamental in order to guarantee effective respect for the freedom of expression and access to information of the indigenous peoples of our region,” and that, “the law must define appropriately the concept of community media, including its non-commercial and social purpose, and its financial and operating

...continuation

[participacion-de-candidatos-en-medios-de-comunicacion&catid=1:ultimas-noticias&Itemid=89](#); Plurinational Legislative Assembly. House of Representatives. May 26, 2011. *Diputados aprueban por mayoría modificaciones al artículo 82 de la Ley del Régimen Electoral*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=403:-diputados-aprueban-por-mayoria-modificaciones-al-articulo-82-de-la-ley-del-regimen-electoral&catid=1:ultimas-noticias&Itemid=89; National Press Association (ANP)/IFEX. May 24, 2011. *Presidente anuncia modificación de norma que conculca libertad de expresión y de prensa*. Available at: <http://legislaciones.item.org.uy/index?q=node/2902>; Observador Global. May 28, 2011. *Morales promulga reforma a la ley de prensa en Bolivia*. Available at: <http://observadorglobal.com/morales-promulga-reforma-a-ley-de-prensa-en-bolivia-n23691.html>; FM Bolivia. May 30, 2011. *Artículo 82 de Ley Electoral sigue limitando la libertad de expresión*. Available at: <http://fmbolivia.com.bo/noticia54280-articulo-82-de-ley-electoral-sigue-limitando-la-libertad-de-expresion.html>; Reporters Without Borders. May 31, 2011. *Reforma incompleta de la Ley Electoral; temido proyecto de Ley de Telecomunicaciones*. Available at: <http://es.rsf.org/bolivia-reforma-incompleta-de-la-ley-31-05-2011,40382.html>

⁶⁶ National Press Association (ANP)/IFEX. October 17, 2011. *Organizaciones periodísticas lamentan restricciones, falta de información en elecciones judiciales*. Available at: http://www.ifex.org/bolivia/2011/10/17/elecciones_judiciales/es/; Plurinational Electoral Body. November 10, 2011. *Press Bulletin 086/11*. Available at: http://www.oep.org.bo/oep/archivos/noticias/86_PROCLAMACION%20DE%20RESULTADOS%20TSE.pdf

⁶⁷ Telecommunications, Information Technology and Communication Law. Law 164. August 8, 2011. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=3175>; National Press Association (ANP)/IFEX. August 10, 2011. *Presidente promulga Ley de Telecomunicaciones*. Available at: http://www.ifex.org/bolivia/2011/08/10/new_telecommunications_law/es/; Plurinational Legislative Assembly. House of Representatives. July 22, 2011. *Pleno de diputados aprueba en grande y en detalle proyecto de Ley de Telecomunicaciones*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=582:-pleno-de-diputados-aprueba-en-grande-y-en-detalle-proyecto-de-ley-de-telecomunicaciones&catid=1:ultimas-noticias&Itemid=89; El País. July 28, 2011. *Senadores sanciona proyecto de Ley de Telecomunicaciones*. Available at: <http://www.bolivia.com/noticias/AutoNoticias/DetalleNoticia45535.asp>; Radio Nederland. July 29, 2011. *Bolivia aprueba nueva ley de telecomunicaciones*. Available at: <http://www.rnw.nl/espanol/bulletin/bolivia-aprueba-nueva-ley-de-telecomunicaciones>; Diario Crítico de Bolivia. July 23, 2011. *Nueva Ley de Telecomunicaciones es aprobada por el pleno de diputados*. Available at: <http://www.diariocritico.com/bolivia/bolivia/2011/Julio/noticias/281968/ley-de-telecomunicacionesprint.html>; Plurinational Legislative Assembly. House of Representatives. July 11, 2011. *Diputados inician debate del proyecto de Ley de Telecomunicaciones*. Available at: http://www.diputados.bo/index.php?option=com_content&view=article&id=547:-diputados-inician-debate-del-proyecto-de-ley-de-telecomunicaciones&catid=1:ultimas-noticias&Itemid=89; El Diario. July 28, 2011. *Senado inicia debate del proyecto de Ley de Telecomunicaciones*. Available at: http://www.eldiario.net/noticias/2011/2011_07/nt110728/3_07ecn.php

⁶⁸ Telecommunications, Information Technology and Communication Law. Law 164. August 8, 2011. Art. 10. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=3175>

independence from the state and from economic interests.”⁶⁹ In addition, Article 111 of the law provides that, “in cases where the national security of the State is at risk, or there is an external threat, domestic disturbance, or natural disaster,” telecommunications and information technology operators and providers are required to provide their networks, services, broadcasts, transmissions, and reception to the State “free of charge and in a timely manner.”⁷⁰ Some critics of the law have reportedly maintained that Article 111 allows for the interception of communications without a court order.⁷¹ The Special Rapporteur notes that this provision interpreted in accordance with Article 25⁷² of the Constitution of Bolivia establishes the judicial guarantee in question.

3. Brazil

A. Progress

50. The Office of the Special Rapporteur expresses its satisfaction at the passage of the General Public Information Act by the Senate on October 25 and its signing by President Dilma Rousseff on November 18. The act will not enter into force until May 16, 2012, in order to provide time for drafting its regulations and for Brazilian institutions to make the necessary adjustments toward compliance with the provisions of the new legislation. The bill was submitted before Congress in 2009 and was passed by the Chamber of Deputies in 2010. According to information received, among its directives, the Act establishes as a general principle that all information held by the State is public, and secrecy is exceptional. The Act eliminates perpetual secrecy for government documents, limiting the maximum time period of confidentiality for documents classified as “ultra-secret” to 25 years, with one single extension possible; it creates the category of “classified” information, that can remain secret for 15 years, and “confidential” information that can remain so for five years. Access to information on human rights violations carried out by or under the authority of public officials cannot be restricted. Any person can request access to public information, and the agency responsible must grant it immediately, free of charge, or provide a date on which the information will be turned over. The Act guarantees opportunities to appeal denials of access to information to higher instances. A Mixed Commission on Information Evaluation, comprised of ministers and representatives of the Legislative and Judicial Branches, will evaluate classification of information every four years and will be in charge of issuing final rulings on challenges to denials of access. The handling of personal information must be transparent and respect the privacy, private life, honor and image of persons. It shall be subject to a maximum period of restriction of 100 years except when consent is given by the person in question to reveal personal information or in the case of a court order, medical necessity, or statistical uses that do not reveal individual identification.

⁶⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II. CIDH/RELE/INF. 3/09. December 30, 2009. Paras. 96, 105, 108. Available at: <http://www.oas.org/es/cidh/expresion/docs/publicaciones/Radiodifusion%20y%20libertad%20de%20expresion%20FINAL%20PORTADA.pdf>

⁷⁰ Telecommunications, Information Technology and Communication Law. Law 164. August 8, 2011. Art. 111. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=3175>

⁷¹ Knight Center for Journalism in the Americas. July 29, 2011. *Bolivia aprueba ley para aumentar control de medios y permitir intervenciones telefónicas*. Available at: <http://knightcenter.utexas.edu/es/blog/bolivia-aprueba-ley-para-aumentar-control-de-medios-y-permitir-intervenciones-telefonicas>; Jornada Net. July 29, 2011. *Aprueban Ley de Telecomunicaciones que permite escuchas telefónicas*. Available at: <http://www.jornadanet.com/n.php?a=66024-1>

⁷² Article 25 provides, *inter alia*: “All persons have the right to the inviolability of their homes and to the secrecy of all forms of private communications, except as judicially authorized. [...] Neither government authorities nor any person or body may intercept private conversations or communications through facilities that control or centralize them.” (“Toda persona tiene derecho a la inviolabilidad de su domicilio y al secreto de las comunicaciones privadas en todas sus formas, salvo autorización judicial. [...] Ni la autoridad pública, ni persona u organismo alguno podrán interceptar conversaciones o comunicaciones privadas mediante instalación que las controle o centralice.”) See: Constitution of the Plurinational State of Bolivia. Available at: <http://bolivia.infoleyes.com/shownorm.php?id=469>

The restriction on access to personal information cannot be invoked to the detriment of an investigation into irregularities in which the person in question could be implicated. Neither can it be invoked in response to actions toward recovering relevant historical information.⁷³

51. The Office of the Special Rapporteur notes with satisfaction the application of the National Program for the Protection of Human Rights Defenders (PPDDH in its Portuguese acronym) to journalists being threatened or facing circumstances of exceptional risk. According to information received, journalist Wilton Andrade dos Santos with broadcaster Milenius FM in the municipality of Itaporanga D’Ajuda received the protection of the Protection Program after being attacked on December 17, 2010, by two unidentified individuals who threw Molotov cocktails at his home and set his car on fire. According to the information, the journalist had alleged corruption at the municipality and received death threats. According to the information received, the journalist and his family have been protected by the Program since the attack and returned to Itaporanga D’Ajuda from Brasilia on March 19 accompanied by members of the National Police trained in the Program under the auspices of the Human Rights Secretariat, the National Secretariat of Public Safety, and the Federal District Military Police, institutions that continue to follow the case.⁷⁴

52. The Office of the Special Rapporteur learned of the December 22, 2010, capture of a person accused of having participated in the murder of journalist Aristeu Guida da Silva, owner of the newspaper *A Gazeta* in São Fidélis, Rio de Janeiro state, on May 12, 1995. According to the information received, the Police arrested Isael dos Anjos Rosa in Tres Rios, Rio de Janeiro state, as a suspect in several crimes, among them the murder of the journalist. Guida da Silva was murdered after having published a series of articles on incidents of corruption in the São Fidélis municipality. Judicial investigations into the crime revealed that the murder had been ordered by the individuals denounced and that it was executed by a local extermination group.⁷⁵

B. Murders

53. In 2011, the Office of the Special Rapporteur received worrying information on six cases of murders of communicators in Brazil that may be connect to the victims’ professional activities. This Office reiterates the State’s obligation to investigate the crimes, identify those suspected of having committed them, bring them to trial, and provide adequate reparations to the relatives of the victims. These actions are crucial for preventing impunity and repetition of the facts.

54. The Office of the Special Rapporteur learned of the murder of journalist Luciano Leitão Pedrosa, which took place on April 9 in Vitória de Santo Antão, Pernambuco state. According to the information received, two unidentified individuals followed the journalist to a restaurant,

⁷³ Presidency of the Republic. Law No. 12,527 of November 18, 2011. *General Access to Public Information Act*. Available at: http://www.planalto.gov.br/CCIVIL_03/ Ato2011-2014/2011/Lei/L12527.htm; Sociedade Maranhense de Defesa dos Direitos Humanos (SMDDH). November 17, 2011. *Dilma to sign Truth Commission and Access to Information Act this Friday*. Available at: <http://smdh.org.br/?p=124>. Federal Senate. October 26, 2011. *Senate rejects possibility of perpetual confidentiality for government documents*. Available at: <http://www.senado.gov.br/noticias/Jornal/noticia.asp?codNoticia=111536&dataEdicaoVer=20111026&dataEdicaoAtual=20111205&codEditoria=4068&>

⁷⁴ Jornal da Cidade. December 17, 2010. *Atentado: carro de radialista pega fogo e explode*. Available at: <http://2008.jornaldacidade.net/2008/noticia.php?id=86417>. Senoticias. March 18, 2011. *Força Nacional vai atuar na proteção de Wilton Andrade da Milenius FM*. Available at: <http://senoticias.com.br/se/?p=3755>; Human Rights Secretariat. *Proteção a Defensores de Direitos Humanos*. Available at: <http://www.direitoshumanos.gov.br/protacao/defensores>

⁷⁵ Inter-American Press Association (IAPA). December 23, 2010. *Individual accused of the murder of Aristeu Guida da Silva in prison 15 years later*. Available at: <http://www.impunidad.com/noticia.php?id=628&idioma=br>; Agencia Sierra. December 22, 2010. *Tres Rios: P/2 captures journalist’s murderer who had escaped justice*. Available at: http://www.agenciaserra.com.br/ler_noticia.php?acao=noticia&id=8563

where one of them shot him in the head. According to available information, the communicator was a host on the program “Ação e Cidadania” (Action and Citizenship) on TV Victória and also worked for Radio Metropolitana FM. He regularly covered police news and was known for constantly denouncing the actions of criminal groups and questioning local authorities. Family members stated that the journalist had received a number of death threats.⁷⁶

55. According to information received, on May 3 the owner of *Panorama Geral*, Valério Nascimento, who was also a reporter for the newspaper, was murdered in the town of Rio Claro, Rio de Janeiro state. According to the information, Nascimento was found dead at the entrance to his house with several gunshot wounds. Recently, the journalist had launched a new publication, and in its latest edition he revealed a series of alleged irregularities in the public administration of the town of Bananal.⁷⁷

56. On June 15, Brazilian communicator and politician Edinaldo Filgueira was murdered in the town of Serra do Mel, Rio Grande do Norte state. According to the available information, three men approached Filgueira as he was leaving work and shot him at least six times. Filgueira had been president of the Workers Party in Serra do Mel and wrote a blog on politics and the region. He had recently published an article criticizing local authorities, for which he received death threats. On July 2 and 3, authorities captured five people possibly involved in the murder and confiscated guns and ammunition that could have been used in the attack. The prosecutors responsible for the investigation have told Brazilian media that Filgueira’s publications could have been the motive for the attack on him.⁷⁸

57. On July 22, journalist Auro Ida en Cuiabá was murdered in Mato Grosso state. According to information received, Auro Ida was in his car when at least one unidentified individual approached and asked the woman accompanying the journalist to get out of the vehicle. He then shot the communicator several times. José Riva, a deputy and president of the Legislative Assembly in Mato Grosso, told local media that the journalist had told him that he had been receiving threats for several weeks in connection with reports he was working on. Auro Ida was a political journalist and founder of the website *Mídia News*, as well as a columnist with online news outlet *Olhar Direto*.

⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 11, 2011. Press Release R44/11. *Office of the Special Rapporteur for Freedom of Expression Condemns the Murders of Two Journalists in Brazil*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=842&IID=1>; Associação Nacional de Jornais (ANJ). April 13, 2011. *ANJ repudia assassinato do apresentador Luciano Pedrosa*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-repudia-assassinato-do-apresentador-luciano-pedrosa>; Committee to Protect Journalists (CPJ). April 11, 2011. *Brazilian radio and television journalist shot to death*. Available at: <http://cpj.org/es/2011/04/periodista-brasileño-de-radio-y-television-asesina.php>; Reporters Without Borders. April 22, 2011. *Un jornalista assassinado e investigação não avança*. Available at: http://es.rsf.org/brasil-um-jornalista-assassinado-a-22-04-2011_40087.html

⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 11, 2011. Press Release R44/11. *Office of the Special Rapporteur for Freedom of Expression Condemns the Murders of Two Journalists in Brazil*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=842&IID=1>; Committee to Protect Journalists (CPJ). May 4, 2011. *Brazilian newspaper owner shot dead*. Available at: <http://cpj.org/2011/05/brazilian-newspaper-owner-shot-dead.php>; Unesco. May 9, 2011. *Director-General condemns murder of Brazilian journalist Valério Nascimento*. Available at: http://www.unesco.org/new/en/media-services/single-view/news/director_general_condemns_murder_of_brazilian_journalist_valerio_nascimento/

⁷⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 14, 2011. Press Release R69/11. *Office of Special Rapporteur Condemns Murder of Blogger in Brazil and Recognizes Authorities' Initiative in Investigating the Crime*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=854&IID=1>; DOnline. June 16, 2011. *Morte em Serra do Mel pode ter sido crime eleitoral, diz presidente do PT*. Available at: http://www.dnonline.com.br/app/outros/ultimas-noticias/38,37,38,47/2011/06/16/interna_cotidiano,73104/morte-em-serra-do-mel-pode-ter-sido-crime-eleitoral-diz-presidente-do-pt.shtml; Committee to Protect Journalists (CPJ). July 8, 2011. *Five suspects arrested in murder of Brazilian editor*. Available at: <http://cpj.org/2011/07/five-suspects-arrested-in-murder-of-brazilian-edit.php>; Portal Imprensa. July 7, 2011. *Grupo acusado de matar jornalista e preso no RN*. Available at: <http://portalimprensa.uol.com.br/noticias/brasil/39860/grupo+acusado+de+matar+jornalista+e+preso+no+rn/>

He had a long career during which he worked for the newspaper *A Gazeta*, for several radio stations and magazines, and as the communications secretary for the Cuiabá government.⁷⁹ On October 24, the State Secretariat on Public Security in Mato Grosso called the murder a crime of passion. According to reports, the Police arrested two individuals suspected of having participated in the journalist's murder, one of them being the perpetrator of the crime. They had allegedly been hired by the former partner of Ida's girlfriend.⁸⁰

58. The Office of the Special Rapporteur was informed of the September 1 murder of Brazilian radio journalist Vanderlei Canuto Leandro. The murder took place in the city of Tabatinga, Amazonas state. According to the information received, unidentified persons riding a motorcycle fired at the journalist as he returned home that night. Valderlei Canuto Leandro was the host of the program *Séñal Verde*, broadcast by bilingual radio station Radio Frontera, in Tabatinga, on Brazil's border with Colombia and Peru. He was known for his allegations of alleged acts of corruption in the local municipality. This past May, the journalist filed a criminal complaint with the Public Prosecutor over the serious death threats he received, allegedly from a municipal authority.⁸¹

59. On November 6, Gelson Domingos da Silva, a cameraman with TV Bandeirantes, was murdered while covering a police operation against alleged drug traffickers in the Antares favela, in Santa Cruz, city of Rio de Janeiro. According to his final recording, the cameraman was located behind a police officer participating in the operation and protected by a bulletproof vest, filming an intense firefight, when he was struck in the chest by a bullet that presumably came from one of the people the Police were pursuing. The bullet pierced the vest that he wore, and even though he was helped quickly, he died before arriving to a medical center. According to the information, the journalists and the Police were attacked in an area that minutes before had been declared safe. Likewise, the Office of the Special Rapporteur was informed of the Police's efforts to help the wounded cameraman and protect the other journalists covering this situation of extreme risk. The authorities captured several suspects and are investigating who committed the crime.⁸²

60. Principle 9 of the Declaration of Principles of the IACHR states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material

⁷⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 28, 2011. Press Release R78/11: *Office of the Special Rapporteur Condemns Latest Murder of a Journalist in Brazil*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=858&IID=1>; Committee to Protect Journalists (CPJ). July 27, 2011. *Political journalist murdered in Brazil*. Available at: <http://cpj.org/2011/07/political-journalist-murdered-in-brazil.php>; Ihdireto. July 22, 2011. *Riva diz que Auro Ida sofria ameaças e cobra agilidade nas investigaciones*. Available at: <http://www.olhardireto.com.br/noticias/exibir.asp?id=193034>

⁸⁰ Associação Brasileira de Jornalismo Investigativo (Abraji). October 24, 2011. *Journalist shot in July was victim of a passion crime*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1805; SóNoticias. October 17, 2011. *Presos 2 por morte de jornalista Auro Ida; un seria o tirador*. Available at: <http://www.sonoticias.com.br/noticias/9/137507/presos-2-por-morte-de-jornalista-auro-ida-um-seria-o-atirador>

⁸¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 15, 2011. Press Release R102/11. *Office of the Special Rapporteur Condemns Murder of Radio Reporter in Brazil*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=868&IID=1>; Inter-American Press Association (IAPA). September 16, 2011. *Fifth murder of journalist in Brazil this year brings IAPA repudiation*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?seccion=detalles&id=4613&idioma=us; Reporters Without Borders. September 13, 2011. *Concern that investigation could stall in Amazonian border journalist's murder*. Available at: <http://en.rsf.org/brazil-concern-that-investigation-could-13-09-2011,40975.html>

⁸² IACHR. Office of the Special Rapporteur for Freedom of Expression. November 10, 2011. Press Release R119/11. *Office of the Special Rapporteur Regrets Death of Cameraman in Brazil*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=874&IID=1>; International Freedom of Expression Exchange (IFEX). November 9, 2011. *Journalist killed in crossfire while covering a police operation*. Available at: http://www.ifex.org/brazil/2011/11/09/domingos_da_silva_killed/; O Globo. November 6, 2011. *Veja como o cinegrafista da BAND foi morto durante operação do BOPE no Rio de Janeiro*. Available at: <http://www.youtube.com/watch?feature=endscreen&v=JMt70iM879c&NR=1>

destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Attacks on and threats toward the media and journalists

61. On March 23, an unidentified individual fired at Ricardo Gama, wounding him in the head. According to information received, the communicator was in the Copacabana neighborhood, Rio de Janeiro, when the aggressor attacked him from an automobile. Witnesses to the attack helped Gama and took him to a hospital, where they were able to save his life. Ricardo Gama, an attorney, publishes a blog under his own name where he writes about controversial political and law enforcement topics. In posts written prior to the attack, he commented on people who provide drugs in poor neighborhoods and criticized state and local government administration. As he has recovered, Gama has continued to update his website with posts on the same topics.⁸³

62. On January 4, the vehicle of journalist Jorge Chahad was fired on in Aguaí, São Paulo. Chahad is a press advisor to the mayor’s office and a reporter with weekly newspaper *O Imparcial*, where he writes on local politics and corruption.⁸⁴

63. The Office of the Special Rapporteur was informed of threats and attacks suffered on January 6 by a team from RBS TV in Indaial, Santa Catarina state, while it was investigating allegations of corruption among local businessmen. According to the information, reporter Francis Silvy and cameramen Marcio Ramos and Andreu Luis were threatened with a firearm, struck and chased when they tried to interview the individuals against whom the allegations have been raised.⁸⁵

64. The Office of the Special Rapporteur learned of a January 17 attack on the home of journalist Orley Antunes, director of the newspaper *Morretes Notícia*, in Paraná. According to the information received, unidentified individuals broke down the door of the house and tossed in a homemade bomb, which broke windows. The attack did not cause any injuries.⁸⁶

65. The Office of the Special Rapporteur was informed of an attack involving shots fired at a TV Globo helicopter in Rio de Janeiro on January 24, 2011. According to the information, a

⁸³ Committee to Protect Journalists (CPJ). March 24, 2011. *Blogueiro brasileiro crítico baleado em Brasil*. Available at: <http://cpj.org/es/2011/03/blogueiro-brasileno-critico-baleado-en-rio-de-janei.php>; Reporters Without Borders. March 24, 2011. *Suspeita de represalia: Blogueiro é atacado a tiros no Rio*. Available at: http://es.rsf.org/brasil-suspeita-de-represalia-blogueiro-e-24-03-2011_39864.html; O Globo. March 23, 2011. *Blogueiro Ricardo Gama é baleado em Copacabana*. Available at: <http://oglobo.globo.com/rio/mat/2011/03/23/blogueiro-ricardo-gama-baleado-em-copacabana-924069278.asp>. See also, Ricardo Gama’s Blog. Available at: <http://ricardo-gama.blogspot.com/>

⁸⁴ Inter-American Press Association (IAPA). January 26, 2011. *IAPA condemns attack on Brazilian journalist*. Available at: http://www.sipiapa.org/v4/comunicados_de_prensa.php?idioma=sp&seccion=detalles&id=4512; Associação Nacional de Jornais (ANJ). July 2011 *Relatorios de Atividades e de Liberdade de imprensa*. Pag. 54. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>

⁸⁵ Instituto Prensa y Sociedad (IPYS)/IFEX. January 14, 2011. *TV station news crew threatened and assaulted*. Available at: http://www.ifex.org/brazil/2011/01/14/rbs_tv_attack/; TV Globo. January 7, 2011. *TV Globo - RBS TV SC reporter is assaulted while reporting on Indaial*. Available at: <http://www.youtube.com/watch?v=2ZpXPfx4Ldw>

⁸⁶ Folha. January 21, 2011. *Casa de director de jornal é alvo de bomba no Paraná*. Available at: <http://www1.folha.uol.com.br/poder/864229-casa-de-diretor-de-jornal-e-alvo-de-bomba-no-parana.shtml>; Inter-American Press Association (IAPA). January 26, 2011. *IAPA condemns attack on Brazilian journalist*. Available at: http://www.sipiapa.com/v4/comunicados_de_prensa.php?idioma=us&seccion=detalles&id=4512

news team with the channel was covering a police operation in the city's *favelas* when it was shot at. No one was injured, but the helicopter had to make an emergency landing.⁸⁷

66. According to information received, journalist Vítor Soares, with *Victorpress Fotojornalismo*, was attacked on March 30 while covering an operation of the Federal Police in Manaus to investigate fraud in that city. An attorney suspected of participating in the scheme threatened and attacked the journalist, damaging his photography equipment.⁸⁸

67. On June 3, a council member of the Paço do Lumiar municipality assaulted journalist Moreira Neto after she published articles on corruption in which the council member had allegedly participated. According to the information, the politician struck the journalist and damaged her photography equipment.⁸⁹

68. According to information received, Rodrigo Rangel, a journalist and editor with the magazine *Veja*, was threatened and assaulted by a lobbyist in a restaurant in Brasília on August 6. According to the information, the journalist interviewed the lobbyist to ask about allegations regarding corruption committed by public officials. The lobbyist threatened the communicator and his family, threw him against a table, struck him and took his notebook.⁹⁰

69. On October 3, in Russas, Ceará state, unidentified individuals fired on the home of journalist Francisco Cidimar Ferreira Sombra, the host of political and social programs on community radio station Araibu FM.⁹¹

70. The Office of the Special Rapporteur learned of an attack on the vehicle of journalist Sergio Ricardo de Almeida da Luz. On October 5, his vehicle was struck by six shots while in front of his home in Toledo, Paraná state. According to the information, the journalist is the owner of weekly newspaper *Gazeta do Oeste* and was investigating an apparently unjustified increase in the personal assets of a public functionary.⁹²

⁸⁷ Instituto Prensa y Sociedad (IPYS)/IFEX. January 27, 2011. *Drug traffickers open fire on TV Globo helicopter*. Available at: http://www.ifex.org/brazil/2011/01/27/tv_globo_shots/; Associação Nacional de Jornais (ANJ). January 2, 2011. *ANJ condemns attack on Globo helicopter*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-condena-ataque-a-helicoptero-da-globo/>

⁸⁸ A Crítica. April 2, 2011. *Agredido na operação Sol Dourado, fotojornalista denuncia advogado*. Available at: http://acritica.uol.com.br/manaus/Amazonas-Manaus-Amazonia-Agredido-Sol-Dourado-fotojornalista-advogado_0_455354505.html; Associação Nacional de Jornais (ANJ). July 2011. *Relatórios de Atividades e de Liberdade de imprensa*. Pag. 53. Available at: <http://www.anj.org.br/programas-e-acoes/relatorios/relatorios-de-liberdade-de-imprensa>

⁸⁹ Associação Nacional de Jornais (ANJ). July 2011 *Relatórios de Atividades e de Liberdade de imprensa*. Pag. 54. Available at: <http://www.anj.org.br/programas-e-acoes/relatorios/relatorios-de-liberdade-de-imprensa>; O Quarto Poder. June 3, 2011. *Vereador agride jornalista em Paço do Lumiar*. Available at: <http://oquartopoder.com/2011/06/03/vereador-agride-jornalista-em-paco-do-lumiar/>

⁹⁰ Associação Nacional de Jornais (ANJ). August 6, 2011. *ANJ condemns aggression against Veja editor*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-divulga-nota-condenando-agressao-a-editor-de-veja/>; Instituto Prensa y Sociedad (IPYS)/IFEX. August 27, 2011. *Lobista agrade a editor de revista Veja*. Available at: <http://www.ipys.org/?q=alerta/769>

⁹¹ Ceará Agora. October 4, 2011. *Radialista de Russas sofre atentado na noite desta segunda feira*. Available at: <http://www.cearaagora.com/noticias/policial/radialista-de-russas-sofre-atentado-na-noite-desta-segunda-feira>; TV Russas. *Radialista Cid Ferreira sofre atentado em sua residencia*. Available at: <http://tvrussas.com.br/verNoticia.php?idNot=1343&idCat=19>

⁹² O Paraná. October 6, 2011. *Attack*. Available at: <http://www2.oparana.com.br/policia/atentado-3010/>; Knight Center for Journalism in the Americas. October 6, 2011. *Carro de periodista policial es baleado en atentado en Brasil*. Available at: <https://knightcenter.utexas.edu/es/blog/carro-de-periodista-policial-es-baleado-en-atentado-en-brasil>

71. The Office of the Special Rapporteur learned that on March 3, a convoy of special tactical forces (ROTAM in the Portuguese acronym) vehicles of the Military Police of Goiás passed in front of newspaper *O Popular* with emergency lights and sirens on after that newspaper published information that day on a federal investigation into the existence of an extermination group involving members of that police force. According to the information received, the parade of police units was interpreted by the newspaper as an act of intimidation. According to the information, the Goiás ROTAM commander was removed from his position, ROTAM operations were suspended, and both the commander and the police officers who participated were subjected to disciplinary measures.⁹³

72. The Office of the Special Rapporteur learned that in January, journalist Luis Cardoso had repeatedly received death threats after publishing articles on a warrant for the arrest of the mayor of the city of Barra do Corda, in Maranhão, who had escaped the authorities. During the calls, the perpetrator of the threats warned the journalist that he knew where he lived and that he would kill him.⁹⁴

73. Principle 9 of the Declaration of Principles of the IACHR establishes that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

D. Subsequent liability

74. The Office of the Special Rapporteur received information on an accusation submitted on June 28 to the Federal Police of São José do Rio Preto, in São Paulo state, against journalist Allan Abreu, with *Diário da Região*, for distributing information considered by law to be classified. The journalist refused to reveal the source of the information. The case originated with the journalist’s publication of two articles in May containing information from wiretaps carried out by the Police in a year-long investigation into a network of corruption. On July 18, the Federal Police of São José do Rio Preto decided for the moment to not charge the executive director of *Diário da Região*, Fabrício Carareto, who was under investigation for having authorized the publication of the articles.⁹⁵

75. Principle 8 of the Declaration of Principles of the IACHR establishes that, “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

⁹³ Associação Nacional de Jornais (ANJ). March 3, 2011. *ANJ repudia ação intimidatória da PM goiana contra O Popular*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-repudia-acao-intimidatoria-da-pm-goiana-contra-o-popular/>; Folha. March 4, 2011. *Chefe da PM em Goiás é afastado por suspeita de intimidar jornal*. Available at: <http://www1.folha.uol.com.br/poder/884312-chefe-da-pm-em-goias-e-afastado-por-suspeita-de-intimidar-jornal.shtml>

⁹⁴ Inter-American Press Association (IAPA). April 2011. *Information by Country: Brazil*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=46&inford=797&idioma=us; Sindicato dos Periodistas Profissionais do Amazonas. January 18, 2011. *Jornalista é ameaçado de morte após publicar decreto de prisão de prefeito no MA*. Available at: http://www.jornalistasam.com.br/index.php?option=com_content&view=article&id=1346&Itemid=68

⁹⁵ Inter-American Press Association (IAPA). October 2011. *Information by Country: Brazil*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=822&idioma=us; FM Diário. June 28, 2011. *Policia Federal indicia jornalista do diário*. Available at: <http://www.diarioweb.com.br/fmdiario/Noticias/Cidades/66449,,Policia+Federal+indicia+jornalista+do+Diario.aspx>; Meionorte. June 30, 2006. *Jornalista é indiciado pela após se negar a revelar sua fonte*. Available at: <http://www.meionorte.com/noticias/policia/jornalista-e-indiciado-pela-pf-apos-se-negar-a-revelar-sua-fonte-136686.html>; Associação Nacional de Jornais (ANJ). July 2011. *Relatorios de Atividades e de Liberdade de imprensa*. Pag 59. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>

E. Prior conditioning

76. According to information received, the July 15 edition of the newspaper *Daqui*, in Montes Claros, Minas Gerais state, was confiscated in enforcement of a restraining order handed down by Judge Marco Antônio Ferreira of the 3ra Corte Civil de Montes Claros and requested by the mayor of the municipality. The confiscated edition published a front-page report on information on alleged acts of corruption committed by the mayor using municipal funds. The removal of the newspaper from sales points coincided with a visit that the Minas Gerais governor was making that day to the municipality. According to the information, the order to seize the newspapers was executed by that city's police.⁹⁶

77. The Office of the Special Rapporteur learned of an injunction handed down on September 2 by Appeals Court Judge Leonel Pires Ohlweiler, of the Ninth Civil Chamber of the Tribunal of Justice of Rio Grande do Sul prohibiting the newspaper *Zero Hora* and other media with the RBS group from publishing the name or image of a municipal councilperson from Dom Pedro de Alcântara on pain of receiving a daily fine of 1000 reais. The councilperson had been mentioned in articles on allegations of corruption that were being leveled and investigated by the Office of the Public Prosecutor. On appeal, the measure was overturned on September 15.⁹⁷

78. According to information received, on September 6, Substitute Judge Adriana García Rabelo, with the First Instance Court of Novo Lima, Belo Horizonte metropolitan region, Minas Gerais, issued an injunction ordering magazine *Viver Brasil* to remove an article on alleged acts of corruption by the Novo Lima mayor from its print editions and the Internet. In the injunction, the judge orders the magazine "to refrain from carrying out any act that could offend the image and the honor of the petitioner in any way" and abstain from distributing the copies of editions 65 of the magazine *Viver* in the city of Novo Lima.⁹⁸

79. Principle 5 of the IACHR's Declaration of Principles establishes that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

⁹⁶ *Daqui*. August 26, 2011. *Censored*. Available at: http://daquimoc.blogspot.com/2011_08_01_archive.html; *Daqui*. July 14, 2011. *Prefeito lingua solta e desmoralizado*. Available at: http://daquimoc.blogspot.com/2011_07_01_archive.html; Associação Nacional de Jornais (ANJ). July 2011. *Relatorios de Atividades e de Liberdade de imprensa*. Pag 60. Available at: <http://www.anj.org.br/programas-e-acoas/relatorios/relatorios-de-liberdade-de-imprensa>; Inter-American Press Association (IAPA). October 2011. *Information by Country: Brazil*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=822&idioma=us

⁹⁷ Associação Brasileira de Jornalismo Investigativo (Abraji). September 2, 2011. *Abrajo condemns court censorship of RBS group*. Available at: http://abraji.org.br/?id=90&id_noticia=1719; Associação Nacional de Jornais (ANJ). September 2, 2009. *ANJ condena decisão da Justiça do Rio Grande do Sul que determina a não citação de vereador em noticiário*. Available at: <http://oglobo.globo.com/politica/anj-condena-decisao-da-justica-do-rio-grande-do-sul-que-determina-nao-citacao-de-vereador-em-noticiario-2702920>; Portal Imprensa. September 16, 2011. *Justiça derruba censura ao Grupo RBS, que denunciava "Farra das Diárias"*. Available at: <http://portalimprensa.uol.com.br/noticias/brasil/44543/justica+derruba+censura+a+publicacoes+do+grupo+rbs+que+de+nunciavam+farra+das+diarias/>; Associação Brasileira de Jornalismo Investigativo (Abraji). September 15, 2011. *Rio Grande do Sul judge suspends RBS censorship*. Available at: http://abraji.org.br/?id=90&id_noticia=1731

⁹⁸ *Viver Brasil*. September of 2011. *Lei da mordaca*. Available at: <http://www.revistaviverbrasil.com.br/80/materias/01/imprensa/lei-da-mordaca/>; Estadão. September 15, 2011. *Em Minas Gerais, revista é obrigada a recolher edição*. Available at: <http://www.estadao.com.br/noticias/impreso,em-minas-gerais-revista-e-obrigada-a-recolher-edicao,772713,0.htm>; Associação Brasileira de Jornalismo Investigativo (Abraji). September 14, 2011. *Abraji condena censura judicial a revista de MG*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1728

F. Legal reforms

80. The Office of the Special Rapporteur learned that on November 30, the Senate passed in an initial vote proposed constitutional amendment PEC 33/2009 reestablishing the requirements that a higher education diploma must be had as a requirement for exercising the profession of journalist.⁹⁹ The measure passed despite the fact that on June 17, 2009, the Supreme Federal Tribunal ruled that the requirement for journalists to have a diploma as a condition for the exercise of journalism activity was unconstitutional. Based expressly on the inter-American standards in force, the Tribunal found that the provision is contrary to Article 13 of the American Convention on Human Rights.¹⁰⁰ Nevertheless, the new proposal was passed by the Chamber of Deputies and now by the Senate.¹⁰¹ The amendment must go to a second vote by the full Senate, but as of the publication deadline for this report, the vote had not yet been scheduled. If the Senate passes the proposal in the second vote, it will be sent once again to the Chamber of Deputies.¹⁰²

81. Principle 6 of the Declaration of Principles of the IACHR establishes that, "Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State."

4. Canada

82. The 2010 Annual Report of the Office of the Special Rapporteur contained information about the imposition of significant limitations on the exercise of freedom of expression and the excessive use of police force against peaceful participants in the G20 Summit in Toronto, on June 26 and 27, 2010.¹⁰³ With respect to this matter, the Office of the Special Rapporteur takes note of the report of the House of Commons Standing Committee on Public Safety and National Security of the Canadian Parliament on the events that occurred in Toronto, as well as the reports of the Ombudsman of Ontario and the Canadian Civil Liberties Association (CCLA) and the National Union of Public and General Employees (NUPGE). The Canadian Parliament report recommended a public, independent, and exhaustive judicial investigation, "with sufficiently broad terms of reference to allow it to investigate all levels of government, all decision making processes and all the events that

⁹⁹ Federal Senate. No date. *Proposta de Emenda a Constituição. PEC 33/2009*. Available at: http://www.senado.gov.br/atividade/materia/Consulta.asp?STR_TIPO=PEC&TXT_NUM=33&TXT_ANO=2009&Tipo_Cons=6&IND_COMPL=&FlagTot=1

¹⁰⁰ IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51. December 30, 2009. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 62. Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

¹⁰¹ Agência Câmara de Notícias. July 14, 2010. *Comissão aprova obrigatoriedade de diploma para jornalistas*. Available at: <http://www2.camara.gov.br/agencia/noticias/149724-COMISSAO-APROVA-OBRIGATORIEDADE-DE-DIPLOMA-PARA-JORNALISTAS.html>; Knight Center for Journalism in the Americas. December 1, 2011. *Senado brasileiro aprova proposta que restabelece exigência de diploma para jornalistas*. Available at: <http://knightcenter.utexas.edu/pt-br/blog/senado-brasileiro-aprova-proposta-que-restabelece-exigencia-de-diploma-para-jornalistas>

¹⁰² G1. November 30, 2011. *Senado aprova em primeiro turno exigência de diploma para jornalista*. Available at: <http://g1.globo.com/politica/noticia/2011/11/senado-aprova-exigencia-de-diploma-para-jornalista.html>

¹⁰³ In 2010 the Office of the Special Rapporteur learned that hundreds of individuals had reportedly been arrested during the G20 Summit in Toronto, and that the Police had allegedly used excessive force to make arrests and control the public, including peaceful demonstrators in protected areas. IACHR. 2010 Annual Report. OEA/SER.L/V/II. Doc.5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 99. <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

occurred that led to property damage, civil rights violations, and bodily harm,” and with the power to make recommendations stemming from its findings to ensure similar events are never repeated.¹⁰⁴ The report of the Ombudsman of Ontario established that the Ministry of Community Safety and Correctional Services, based on the Public Works Protection Act, implemented and used Regulation 233/10 to reinforce security during the G20 Summit. The Ombudsman considered the regulation to be unconstitutional and maintained that it should never have been enacted.¹⁰⁵ According to the Ombudsman, the effect of the regulation was to limit freedom of expression, and to grant police the power to make arrests without just cause and conduct unreasonable searches. The Ombudsman further noted that the public was not duly informed of the enactment of Regulation 233/10, and therefore many people were arrested simply for exercising their rights, unaware of the limits imposed by that regulation.¹⁰⁶ Among other recommendations, the Ombudsman proposed that the Public Works Protection Act be revised or replaced, and that the powers granted to the police under this law be reviewed.¹⁰⁷ The Ministry of Community Safety and Correctional Services of Ontario reportedly agreed to comply with all of the Ombudsman’s recommendations.¹⁰⁸ Finally, the CCLA and NUPGE report concluded that the majority of the arrests made during the G20 Summit were “arbitrary and excessive” and recommended a joint federal/provincial public inquiry and improvements to police policy and police training.¹⁰⁹

83. The Office of the Special Rapporteur recognizes the Canadian government’s efforts in providing the Commission with detailed information regarding the security services’ response to the 2010 G20 protests and the actions undertaken by the government to review this response. The Office of the Special Rapporteur takes note of the many proceedings initiated, both *ex officio* and in response to formal complaints, at the municipal, provincial and federal levels of government to examine the policing of the G20 summit. The Rapporteurship will continue to monitor these proceedings with great interest. The Rapporteurship further notes that, based on the government’s explanation of the scope of the “unlawful assembly” prohibition in Section 63 of Canada’s Criminal Code,¹¹⁰ it continues to share the UN Human Rights Committee’s concern regarding the practical implementation of this provision¹¹¹ and its potential chilling effect on social protest.

¹⁰⁴ See Recommendation 7, House of Commons. Canada. March 11, 2011. *Report of the Standing Committee on Public Safety and National Security. Issues Surrounding Security at the G8 and G20 Summits.* p. 19. Available at: http://publications.gc.ca/collections/collection_2011/parl/XC76-403-1-1-04-eng.pdf

¹⁰⁵ The Ombudsman’s Report indicated that Regulation 233/10 expired before a court of competent jurisdiction could rule on its compatibility with the constitution. Ombudsman of Ontario. December 7, 2010. *Caught in the Act.* pp. 99 et seq. Available at: <http://www.ombudsman.on.ca/Ombudsman/files/58/581252d9-1809-4291-831b-88e9adb480c5.pdf>

¹⁰⁶ Ombudsman Ontario. December 7, 2010. *Caught in the Act.* p. 100. Available at: <http://www.ombudsman.on.ca/Ombudsman/files/58/581252d9-1809-4291-831b-88e9adb480c5.pdf>

¹⁰⁷ Ombudsman Ontario. December 7, 2010. *Caught in the Act.* p. 102. Available at: <http://www.ombudsman.on.ca/Ombudsman/files/58/581252d9-1809-4291-831b-88e9adb480c5.pdf>

¹⁰⁸ Response of the Government of Canada to the request for information. “*Special Hearing Concerning the Situation of the Right to Freedom of Expression, Assembly, Association and Movement in Canada.*” January 31, 2011. p. 24.

¹⁰⁹ Canadian Civil Liberties Association (CCLA) National Union of Public and General Employees (NUPGE). February 2011. *Breach of the Peace.* pp. 50 et seq. Available at: <http://ccla.org/wordpress/wp-content/uploads/2011/02/Breach-of-the-Peace-Final-Report.pdf>

¹¹⁰ See Response of the Government of Canada to the request for information. “*Special Hearing Concerning the Situation of the Right to Freedom of Expression, Assembly, Association and Movement in Canada.*” January 31, 2011. pp. 6-7. The Government explained the following regarding the courts’ interpretation of Section 63:

“the “common purpose” of the assembly does not have to be unlawful in and of itself, nor is there a requirement to show that an individual member of the assembly intended to commit an offence. Thus, an individual member of the assembly can be found guilty of the offence of unlawful assembly if the prosecution shows beyond a reasonable doubt that the person was aware that certain individuals conducted themselves in a manner as to cause, in the vicinity of the assembly,

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84. The Office of the Special Rapporteur recognizes the October 19 decision of the Supreme Court of Canada in the case of *Crookes v. Newton*, which considered whether a person may be liable for defamation if his or her website links to another site containing content that defames (or is alleged to defame) someone's character. In order to establish defamation, it must be shown that there was publication, and the Court was asked to consider whether creating a link constituted publication. The Court held that it does not, arguing that doing so would create "a presumption of liability for all hyperlinkers," which would "seriously restrict the flow of information on the Internet and, as a result, freedom of expression." Therefore, "only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be 'published' by the hyperlinker."¹¹² The Office of the Special Rapporteur recalls that, "No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so ('mere conduit principle')."¹¹³

85. The Office of the Special Rapporteur also took note of the decision of the Superior Court of Justice of Ontario on a motion brought in the case of *Morris v. Johnson*. The case involves a defamation suit brought by the former mayor of the municipality of Aurora based on comments posted on a local Aurora blog which criticized her work in office. As part of her lawsuit, she brought a motion asking the Court to order the known parties to reveal identifying information about an anonymous blogger(s). The Superior Court found that the former mayor is not entitled to the identifying information she was seeking because she had not established a *prima facie* case of defamation. As the former mayor had not laid out the particular statements she alleged were defamatory, the Court held that they could not determine whether her case was, on its surface, sufficient to establish defamation. The Court also noted that the bloggers in this case had a reasonable expectation of anonymity since they did not have to identify themselves in order to participate in the blog. The Court concluded that, "[i]n the circumstances of this case, where the Plaintiff has not established a *prima facie* case, the public interest favouring disclosure clearly does not outweigh the legitimate interests in freedom of expression and the right to privacy of the persons sought to be identified."¹¹⁴

86. According to information received, on December 31, 2010, a judge of the Supreme Court of British Columbia ordered Elaine O'Connor, a reporter from the newspaper *The Province*, to identify a confidential source in order to determine the intent or malice with which that source had

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on reasonable grounds, fear that they would disturb the peace tumultuously. Evidence of "reasonable grounds to fear a tumultuous disturbance of the peace" may be direct or circumstantial." [internal citations omitted]

¹¹¹ UN Human Rights Committee. *Concluding Observations of the Human Rights Committee: Canada*. CCPR/C/CAN/CO/5. April 20, 2006. Para. 20. Available at: [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf)

¹¹² Supreme Court of Canada. October 19, 2011. *Crookes v. Newton*. 2011 SCC 47. Available at: <http://csc.lexum.org/en/2011/2011scc47/2011scc47.pdf>

¹¹³ United Nations Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on Freedom of Expression, African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Freedom of Expression and the Internet*. June 1, 2011. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=849&IID=2>

¹¹⁴ Superior Court of Justice of Ontario. *Morris v. Johnson*. 2011 ONSC 3996. Decision of July 20, 2011. Available at: <http://canlii.org/en/on/onsc/doc/2011/2011onsc3996/2011onsc3996.html>

acted. The source had been used in an article on the alleged excessive spending of a former legislator during an electoral campaign. The judge ruled that the confidentiality of the source must be protected if the motivation for providing information to a journalist is civic duty or the protection of the integrity of the government, but not if that action arises from an interest in gaining an advantage in a family dispute or a plan to personally defame or discredit an elected politician. In the judge's opinion, knowing the identity of the source is relevant in determining the state of mind under which he or she acted. Two prior judgments of the Supreme Court of Canada, issued in 2010, had held that, "The public's interest in being informed about matters that might only be revealed by secret sources (...) is not absolute. It must be balanced against other important public interests, including the investigation of crime. In some situations, the public's interest in protecting a secret source from disclosure may be outweighed by other competing public interests and a promise of confidentiality will not in such cases justify the suppression of the evidence."¹¹⁵

87. The Rapporteurship recalls that principle 8 of the IACHR's Declaration of Principles on Freedom of Expression establishes that: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

88. Finally, the Rapporteurship has received information about alleged difficulties in exercising the right to access to public information in Canada. According to a study published by the Canadian Journalists for Free Expression (CJFE), 44% of requests for access at the federal level were not adjudicated within the 30-day time period established under the Access to Information Act,¹¹⁶ and the average length of time for a decision on a request is 395 days.¹¹⁷ Additionally, according to the report, applicants receive all of the requested information in only 15% of cases decided.¹¹⁸

89. The Rapporteurship recalls that, in accordance with principle 4 of the IACHR's Declaration of Principles on Freedom of Expression, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

5. Chile

90. On the subject of social protest and with regard to the student demonstrations carried out in Chile during 2011, a thematic hearing was held during the 143rd period of sessions. During that hearing, the petitioners alleged abusive use of force by police and documented their statements with a series of videos and testimony from students.¹¹⁹ For its part, the State indicated that although some violence had taken place in the context of the demonstrations in Chile, it

¹¹⁵ Supreme Court of British Columbia. December 31, 2010. *Lougheed v. Wilson 2010 BCSC1871*. Available at: <http://www.courts.gov.bc.ca/jdb-txt/SC/10/18/2010BCSC1871.htm>; The Canadian Journalism Project. January 13, 2011. *CJFE concerned that Vancouver journalist may be forced to reveal her source*. Available at: <http://j-source.ca/article/cjfe-concerned-vancouver-journalist-may-be-forced-reveal-her-source>

¹¹⁶ Access to Information Act. Section 7. Available at: <http://laws-lois.justice.gc.ca/eng/acts/A-1/page-3.html>

¹¹⁷ Canadian Journalists for Free Expression. *Review of Free Expression in Canada 2010/2011*. May 10, 2011. pp. 24-26. Available at: <http://www.cjfe.org/resources/features/review-free-expression-canada-2011>

¹¹⁸ Canadian Journalists for Free Expression. *Review of Free Expression in Canada 2010/2011*. May 10, 2011. p. 26. Available at: <http://www.cjfe.org/resources/features/review-free-expression-canada-2011>

¹¹⁹ With regard to the hearing, the IACHR issued Press Release 87/11: *IACHR Expresses Concern for Violence Against Student Protests in Chile*. August 6, 2011. Available at: <http://www.cidh.oas.org/Comunicados/English/2011/87-11eng.htm>

guaranteed the full exercise of social protest, manifested by the authorized participation of 2 million people in protest marches during 2011, of which only some had been arrested.¹²⁰

91. With regard to these facts, both in the hearing and in its communications with the State, the IACHR took note of the broad-based social participation in the demonstrations that took place in 2011 and the existing guarantees that project the freedom to hold protests, but it expressed its profound concern for the acts of violence that were reported, some of which were very serious.¹²¹ In this regard, the Commission recalled that the rights to assembly, demonstration and freedom of expression are fundamental rights guaranteed in the American Convention on Human Rights. Given the importance of these rights for the consolidation of democratic societies, the Commission has found that any restriction on them must be justified by imperative social interest. In this sense, the Commission indicated that the State can place a reasonable limitation on demonstrations in order to ensure they are carried out peacefully and it may disburse demonstrations that become violent, as long as the limitations are guided by the principles of legality, necessity and proportionality.

92. For their part, the actions of State agents must not provide a disincentive to the rights to assembly, demonstration and free expression, meaning that the clearing of a demonstration must be justified according to the duty to protect persons. Security operations implemented in this context must involve measures that are the safest and least damaging to the fundamental rights in question. The use of force in public demonstrations must be exceptional and applied only in circumstances where it is strictly necessary according to well-known international principles. Security operations carried out by the authorities must always take the higher interests of the child into consideration and take all necessary measures to ensure children are protected against all types of violence.

93. The Office of the Special Rapporteur expresses its concern over a series of attacks on and arrests of communicators carried out during police actions in the course of the large demonstrations that took place in 2011. On February 2, a journalist with online newspaper *El Mostrador*, Jorge Molina Sanhueza, was arrested while he was filming confrontations between Carabineros (Chile's militarized police force) and people demonstrating against an increase in public transportation fees. According to the information, the police arrested Molina without explaining their reasons and took him to the capital's First Precinct, where he remained for four hours until he was released with a citation from the Office of the Public Prosecutor for alleged "disturbances."¹²² On February 25, Carabineros arrested journalist Patricio Mery, director of online news site Panorama News, while he was covering a demonstration against a thermoelectric energy project.¹²³ The Office

¹²⁰ The State representative said that these numbers represent an improvement over previous years. Audio and video of the thematic hearing. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2>

¹²¹ With regard to the hearing, the IACHR issued Press Release 87/11: *IACHR Expresses Concern for Violence Against Student Protests in Chile*. August 6, 2011. Available at: <http://www.cidh.oas.org/Comunicados/English/2011/87-11eng.htm>

¹²² Nación.cl. February 3, 2011. *Carabineros arrest journalist during protest against Transantiago*. Available at: <http://www.lanacion.cl/noticias/site/artic/20110203/pags/20110203081632.html>; *El Mostrador*. February 2, 2010. *El Mostrador journalists arrested for recording demonstration in downtown Santiago*. Available at: <http://www.elmostrador.cl/noticias/2011/02/02/periodista-de-el-mostrador-detenido-por-grabar-manifestacion-en-el-centro-de-santiago/>

¹²³ Panorama News. February 25, 2011. *Panorama News director arrested for covering demonstration along with documentarian Chao Pescao*. Available at: <http://www.pnews.cl/2011/02/25/director-de-panoramas-news-y-documentalista-de-chao-pescao-son-detenidos-por-cubrir-manifestacion/>; Professional Journalist Association of Chile. February 26, 2011. *Journalist Professional Association of Chile asks Hinzpeter to explain arrest of professionals*. Available at: http://www.colegiodeperiodistas.cl/index.php?option=com_content&view=article&id=61&Itemid=6

of the Special Rapporteur learned of the January 13 arrest of photographer Marcela Rodríguez, with online newspaper Mapuexpress, during a demonstration in Temuco against a hydroelectric project. In a hearing held on June 22, the Office of the Public Prosecutor declined to press charges because the alleged crime did not affect the public interest.¹²⁴

94. On September 8, Carabineros arrested journalist Raúl Flores Castillo, director of online media outlet Dilemas, while he was covering a day of protests in Santiago. According to the information received, he was arrested while photographing a demonstration and although he identified himself as a journalist, he was placed in a police vehicle where the images and audio he had recorded were erased. He remained in detention for six hours.¹²⁵ On September 29, Carabineros arrested and beat journalist Nicolás Salazar, with the media outlets of the student Federation of the Universidad de Concepción *Metiendo Ruido*, while he was attempting to use a camera to record police officers as they entered the university. According to the information, the police beat and arrested Salazar, knocking down his camera and removing its battery.¹²⁶ On August 4, police officers arrested Ítalo Retamal and Dauno Tótoro, producers with *CEIBO Producciones*, while there were recording confrontations between police and demonstrators in Santiago. According to the information, both communicators were arrested with violence, but as was recorded in a video of the incident, when the Carabineros tried to put them in a police vehicle, other journalists and protesters were able to pull them away and free them in the midst of a struggle and deployment of teargas.¹²⁷ In the early morning hours of August 25, Carabineros tried violently to break into the facilities of community television channel *Señal 3* in La Victoria, Santiago. According to the information received, neighbors and the channel's employees prevented the police from entering. During the struggle, recorded in a video, several people were struck and the broadcaster's equipment was damaged.¹²⁸ On September 11, in a March in remembrance of the 1973 *coup d'état*, an Argentine public television news team was attacked by masked individuals while covering clashes between demonstrators and police.¹²⁹ On October 6, Carabineros arrested and assaulted Panorama News

¹²⁴ Radio Biobío. May 14, 2011. *Young person accuses Temuco Carabiniro of mistreatment and abuse of authority after marches on HidroAysén*. Available at: <http://www.biobiochile.cl/2011/05/14/joven-denuncia-maltrato-y-abuso-de-autoridad-contra-carabiniro-de-temuco-tras-marchas-por-hidroaysen.shtml>; Mapuexpress. May 14, 2011. *Mapuexpress photographer arrested and humiliated*. Available at: <http://www.mapuexpress.net/?act=news&id=6905>; Reporters Without Borders. June 24, 2011. *Calm debate on environment needed after charges against photographer withdrawn*. Available at: <http://en.rsf.org/chile-press-freedom-cases-highlight-17-05-2011,40290.html>

¹²⁵ Instituto Igualdad [Equality Institute]. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Dilemas. September 8, 2011. *Arrest over journalism work described*. Available at: http://www.dilemas.cl/index.php?option=com_content&task=view&id=1002&Itemid=35; Reporters Without Borders. September 15, 2011. *Mounting abuses and violence against journalists amid continuing student protests*. Available at: <http://en.rsf.org/chile-mounting-abuses-and-violence-15-09-2011,40995.html>

¹²⁶ Instituto Igualdad [Equality Institute]. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Reporters Without Borders. October 19, 2011. *RSF expresses concern at attacks on journalists during student demonstrations*. Available at: <http://www.rsf-es.org/news/chile-rsf-manifiesta-su-preocupacion-por-las-agresiones-a-los-medios-en-las-manifestaciones-estudiantiles/>; RadioterraTV. October 18, 2011. *Police violence: Testimony of Nicolás Salazar*. Available at: <http://www.youtube.com/watch?v=v5KpRXT9gMA>

¹²⁷ El Puelche. August 5, 2011. *Video shows arrests of video producers in Santiago*. Available at: <http://www.elpuelche.cl/?p=1931>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Medios Latinos. Fundación Konrad Adenauer. November 14, 2011. *Police aggression against journalists in Chile denounced*. Available at: <http://www.kas.de/wf/en/221.353/>

¹²⁸ Señal 3. August 27, 2011. *Paro Nac. Chile - Carabineros attack in La Victoria*. Available at: <http://www.youtube.com/watch?v=F-uMEGc6Wxs>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁹ Televisión Pública Argentina, Canal 7. September 11, 2011. *Visión Siete: Visión 7 news team attacked in Chile*. Available at: http://www.youtube.com/watch?feature=player_embedded&v=2ayrSTqi-HA#; Knight Center for Journalism in

director Patricio Mery while he was covering the arrest of a demonstrator. According to the information received, Mery repeatedly identified himself as a journalist. Upon his arrest, Mery was handcuffed, threatened and struck by a Carabinero. Two and a half hours later, he was taken to a hospital.¹³⁰ On October 6, a Carabinero wearing a helmet head butted Gonzalo Barahona, a cameraman with Chilevisión, while he and a journalist from that channel, Luis Narváez, were reporting on demonstrations in Santiago. Narváez tried to get the attacker's identification; he was arrested by the police and taken away in a police vehicle.¹³¹

95. The Special Rapporteur emphasizes that Principle 9 of the Declaration of Principles of the IACHR establishes that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

96. The Office of the Special Rapporteur learned of a bill seeking to regulate the exercise of social protest in such a way that it would conflict with inter-American standards on the subject.¹³² Nevertheless, as of the publication deadline of this report, the bill had not moved forward in the legislative chambers.

97. The Office of the Special Rapporteur was informed of the charges filed against Marcelo Núñez Fuentes, director of community broadcaster *Radio Tentación* in Paine on May 10 and against communicator Mireya Manquepillán Huanquil with radio station Kimche Mapu in Puquiñe Lumaco on November 15. They are accused of having violated Article 36(b) of the General Telecommunications Act, which establishes prison sentences for broadcasting operations that do not have the corresponding licenses.¹³³ According to the information, Núñez rejected the Office of the Public Prosecutor's offer to suspend the prosecution if he accepts the charges, does not return to broadcasting, and donates his equipment to communication schools.¹³⁴ The plaintiffs and their

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the Americas. September 14, 2011. *Equipo periodístico argentino es atacado en Chile durante marcha por aniversario del golpe militar*. Available at: <http://knightcenter.utexas.edu/es/blog/equipo-periodistico-argentino-es-atacado-en-chile-durante-marcha-por-aniversario-del-golpe-mili>

¹³⁰ Panorama News. October 6, 2011. *IMG03361*. Available at: <http://www.youtube.com/watch?v=JZ70vG2Qjfg>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹³¹ Chilevisión. October 6, 2011. *Video of arrest of CHV journalist*. Available at: <http://www.youtube.com/watch?v=TYcAksW-7N4>; Instituto Igualdad. Citizen Advisory Program October, 2011. *Human rights and public demonstrations*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹³² The aforementioned bill "that strengthens the preservation of public order" was sent to the Chamber of Deputies by President Sebastian Piñera on September 27, 2011 by means of Message 196-359. Available at: <http://www.elmostrador.cl/media/2011/10/Proyecto-de-ley-que-fortalece-el-resguardo-del-orden-p%C3%BAblico.pdf>

¹³³ Radio Chile. December 2, 2011. *Two community radio broadcasters risking prison*. Available at: <http://radio.uchile.cl/noticias/132553/>; El Mercurio Digital. November 26, 2011. *Chile: Persecution alleged against Mapuche community radio station*. Available at: <http://www.elmercuriodigital.net/2011/11/chile-denuncian-persecucion-una-radio.html>; Mapu Express. November 22, 2011. *Persecution alleged against Mapuche community radio station "Kimche Mapu."* Available at: <http://www.mapuexpress.net/content/news/print.php?id=7824>; OCLACC. November 24, 2011. *Mapuche community radio station Kimche Mapu alleges persecution*. Available at: <http://oclacc.org/noticia/radio-comunitaria-mapuche-kimche-mapu-denuncia-persecucion>; Radio Placeres. May 16, 2011. *Two community radio broadcasters charged under article 36 B*. Available at: <http://www.radioplaceres.cl/2011/05/16/formalizan-a-dos-radialistas-comunitarios-por-articulo-36-b/>

¹³⁴ A third plaintiff, Radio 24 director Miguel Silva, decided to accept the Office of the Public Prosecutor's offer to suspend the trial. World Association of Community Broadcasters (AMARC). May 10, 2011. *Trial begun against Radio Tentación in Paine municipality*. Available at: http://ifex.org/chile/2011/05/13/juicio_emisoras/es/; Radio Tierra. May 10, 2011. *"I am going to trial in defense of freedom of expression in Chile."* Available at: <http://www.radiotierra.com/node/3043>

defense attorneys have argued that currently, many radio broadcasters could be charged, as regulations at the time of the events have not been established under the Community Citizen Radio Broadcasting Services Act (Law 20,433), passed on May 4, 2010. The case originated on November 9, 2010, when police authorities raided community radio stations *Tentación* and *Radio 24*, in Paine in the Santiago metropolitan area.¹³⁵

98. The Office of the Special Rapporteur insists that laws on radio broadcasting must be adjusted to international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law.¹³⁶

99. In the same sense, in its 2010 annual report, the Office of the Special Rapporteur expressed that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.” The Office of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if there are laws establishing discriminatory operating conditions or disproportionate penalties, such as use of criminal law.¹³⁷

6. Colombia¹³⁸

100. The Inter-American Commission on Human Rights has received information concerning the situation of the right to freedom of expression in Colombia, which included data supplied by civil society and by the State. On December 27, 2011, the Colombian State addressed memorandum MPC/OEA No.1829 to the IACHR, forwarding note DIDHD.GAIID No. 79338/1665, dated December 23, 2011 from the Office of the Director of Human Rights and International Humanitarian Law, part of the Ministry of Foreign Affairs, in which reference is made to the situation of freedom of expression in Colombia and information is provided regarding the specific cases reported to the IACHR and presented in this report.

A. Gains

101. The IACHR takes note of the passage by the Congress of the Republic of Colombia of Law No. 1426, signed by President Juan Manuel Santos on December 29, 2010, according to which in the future the limitations period for homicides of journalists, human rights defenders, and members of trade unions is extended from 20 to 30 years.¹³⁹ In 2011, the limitations period expires in at least seven cases of journalists.¹⁴⁰

¹³⁵ Radio Placeres. May 16, 2011. *Formalizan a dos radialistas comunitarios por artículo 36 B*. Available at: <http://www.radioplaceres.cl/2011/05/16/formalizan-a-dos-radialistas-comunitarios-por-articulo-36-b/>

¹³⁶ Cf. IACHR. Annual Report 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Vol II: *2010 Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chap. II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

¹³⁷ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 112 to 116. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

¹³⁸ This section corresponds to the section on freedom of expression in Colombia in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹³⁹ Congress of the Republic of Colombia. December 29, 2010. *Ley No. 1426 de 2010*; Inter-American Press Association (IAPA)/IFEX. January 18, 2011. *Satisface a la SIP reforma legal que permite luchar contra la impunidad*.

¹⁴⁰ Arsenio Hoyos, assassinated September 13, 1991, in Granada, Meta; Carlos Julio Rodríguez and José Libardo Méndez, assassinated May 20, 1991, in Florencia, Caquetá; and Julio Daniel Chaparro and Jorge Enrique Torres,

102. According to the information received, the Attorney General of Colombia, Viviane Morales Hoyos, announced that the department that handles crimes against journalists within the National Unit of Human Rights and International Humanitarian Law will be strengthened with the aim of expediting investigations into the threats that have been made against journalists. According to the information received, that department will take charge of all the cases that different offices of the Public Ministry currently handle independently. In 2010, the Office of the Attorney General had recorded some 50 complaints of threats against journalists.¹⁴¹

103. Politicians Ferney Tapasco González and Dixon Tapasco Triviño were said to have been the subject of an order for preventive detention without the benefit of release in March 2009 for the assassination of journalist Orlando Sierra, assistant director of the daily newspaper *La Patria*, which occurred on January 30, 2002. In its observations to the IACHR, the State reported that on July 25, charges were brought against three persons, “among them Mr. Francisco Ferney Tapasco González, who is currently incarcerated serving the sentence he was given upon his conviction for the crime of aggravated conspiracy to commit crime. However, the prosecutor dropped the case against Mr. Dixon Ferney Tapasco Triviño.”¹⁴² In its report, the State commented that “three persons have thus far been convicted” of the murder of journalist Orlando Sierra.¹⁴³

104. The IACHR learned that the Office of the Attorney General ordered the preventive detention, without benefit of release, of Jaime Arturo Boscan Ortiz, allegedly responsible for the assassination of journalist Jaime Rengifo Ravelo in 2003 in Maicao, department of Guajira.¹⁴⁴

...continuation

assassinated April 24, 1991, in Segovia, Antioquia. Also soon to prescribe are the assassinations of Rafael Solano Rochero, who died on October 30, 1991, in Fundación, Magdalena, and Néstor Henry Rojas Monje, who died on December 28, 1991, in Arauca. Fundación para la Libertad de Prensa (FLIP). September 14, 2011. With respect to Julio Daniel Chaparro and Jorge Enrique Torres, both from the newspaper *El Espectador*, on April 12 the Office of the Attorney General of Colombia decided not to continue the investigation into their assassinations. The Office of the Attorney General is said to have alleged that the persons suspected of assassinating the journalists were guerrillas, that they died in combat with the Army in 2000 and 2002, and that the assassinations could not be characterized as crimes against humanity. [Prescribe caso del periodista Arsenio Hoyos, asesinado hace 20 años en Granada, Meta](#); Fundación para la Libertad de Prensa (FLIP). May 21, 2011. [Homicidios de los periodistas Carlos Julio Rodríguez y José Libardo Méndez prescriben a pesar de los llamados a la Fiscalía](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2011. [Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía](#); El Planeta. April 25, 2011. [Prescripción de asesinatos de periodistas causa indignación](#); Terra Noticias. April 18, 2011. [La SIP preocupada por prescripción de delitos contra periodistas en Colombia](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2011. [Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía](#); El Tiempo. April 17, 2011. [A punto de prescribir proceso por asesinato de Daniel Chaparro](#).

¹⁴¹ Office of the Attorney General. February 9, 2011. [La Fiscal General anuncia fortalecimiento investigativo por amenazas a periodistas](#); Colprensa/Europapress. February 10, 2011. [La Fiscalía colombiana agilizará las investigaciones sobre amenazas contra periodistas](#); RCN Radio. Undated. [Unidad especial de la Fiscalía asume investigación de 50 casos de amenazas contra periodistas](#).

¹⁴² In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011, “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”, p. 14. See also, El Tiempo. July 26, 2011. [Llaman a juicio a Ferney Tapasco por crimen de Orlando Sierra](#); Office of the Attorney General of the Nation. March 29, 2011. [Por el crimen de Orlando Sierra asegurados los Tapasco](#); *Semana*. March 29, 2011. [Profieren medida de aseguramiento a Ferney y Dixon Tapasco por el asesinato de Orlando Sierra](#).

¹⁴³ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. p. 14.

¹⁴⁴ Office of the Attorney General of the Nation. January 28, 2011. [Detención preventiva por homicidio de periodista](#); El Informador. February 1, 2011. [Medida de aseguramiento contra aspirante a la Alcaldía de Maicao](#).

105. In its observations to the IACHR, the State wrote that “the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation currently has 49 assigned cases involving crimes committed against journalists: 39 are active cases involving a total of 106 suspects, 67 persons charged and 58 in detention pending trial. Thus far, 18 convictions have been won, involving 26 persons.”¹⁴⁵

106. According to the information received, on February 24, the 23rd Municipal Court of Bogotá absolved journalist Claudia López of the criminal offenses of *injuria* (libel) and *calumnia* (slander). She was facing a complaint lodged by former president Ernesto Samper, who alleged that a column of hers published in the newspaper *El Tiempo* had been injurious to his honor. The judges in the case absolved her, and in so doing referenced the inter-American doctrine and case-law.¹⁴⁶

107. The IACHR learned of the decision of the 16th Criminal Law Judge of Bogotá in September 2011, who had exonerated journalists Darío Arizmendi Posada, Clara Elvira Ospina, Vicky Dávila, Juan Carlos Giraldo, and Héctor Rincón Tamayo, who had been sued by former presidential adviser José Obdulio Gaviria for the criminal offenses of *calumnia* and *injurias* after the publication of articles in June 2009.¹⁴⁷

108. The Commission recognizes the importance of the issuance of Law No. 1474 of July 12, 2011, “by which provisions are issued aimed at strengthening the mechanisms for preventing, investigating, and punishing acts of corruption and effective government oversight,” in which rules are established on expenditures for official publicity.¹⁴⁸

B. Assassination

109. On June 30, 2011, journalist Luis Eduardo Gómez was assassinated in the municipality of Arboletes. He was engaged in independent work for daily newspapers such as *El Heraldo de Urabá* and *Urabá al Día*, where he covered issues related to tourism and the environment. Luis Eduardo Gómez was known for his investigations into the management of the public resources by the local government, giving impetus to the investigation into the death of his son, and his demands that the State make gains in that investigation, as well as his role as a witness before the Office of the Attorney General in cases of infiltration of paramilitaries in the police in the region.¹⁴⁹ In a communication to the Office of the Special Rapporteur, the Colombian State expressed that it “laments and rejects the homicide that took the life of Mr. Gómez, and

¹⁴⁵ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. p. 14.

¹⁴⁶ Instituto Prensa y Sociedad (IPYS). February 25, 2011. [Juez absuelve a la columnista Claudia López en caso de injuria y calumnia](#); El Universal. February 25, 2011. [Absuelta columnista Claudia López de injuria y calumnia](#); El Espectador. February 24, 2011. [Columnista Claudia López es absuelta](#).

¹⁴⁷ El Espectador. September 14, 2011. [Demanda de José Obdulio Gaviria contra varios periodistas no prosperó](#); La F.M. September 14, 2011. [Precluyó investigación contra periodistas denunciados por José Obdulio Gaviria](#).

¹⁴⁸ Article 10 of the Law restricts the use of official publicity to carrying out the purpose of the agency and to satisfying citizens’ right to information. Contracts entered into for official publicity activities should answer to pre-established criteria of effectiveness, transparency, and objectivity. The Law prohibits the use of official publicity or any other means of disseminating official programs and policies for the promotion of public servants, political parties, or candidates, or that make use of their voice, image, name, symbol, logo, or any other identifiable element that may induce confusion. Congress of the Republic of Colombia. July 12, 2011. [Ley. No 1474 de 2011](#).

¹⁴⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 7, 2011. Press Release R66/11. [Special Rapporteurship on Freedom of Expression Condemns Murder of Journalist in Colombia](#); Fundación para la Libertad de Prensa (FLIP). July 2, 2011. [La FLIP condena asesinato del periodista Luis Eduardo Gómez en Arboletes, Antioquia](#).

reports that it has taken the necessary actions within its legal order with a view to the persons responsible for this act being duly identified and taken before the competent authorities.”¹⁵⁰

C. Attacks on and threats against media and journalists

110. In mid-February, unknown persons were reported to have thrown an incendiary bomb at the home of Rodolfo Zambrano, a journalist with the newspaper *Magangué Hoy*, in Magangué, which caused harm to the façade of the home. According to the information received, at the time of the attack several of his family members were in the home; none suffered any injury.¹⁵¹

111. The IACHR received information concerning the attack with sticks and stones suffered on March 18 by CM& correspondent Ana Mercedes Ariza, and cameraman Armando Camelo by populations in a mining zone in the municipality of California, Santander. Days later the authorities detained four suspects in the attacks which were taped on the video equipment of Camelo.¹⁵²

112. On May 26, 2011, Héctor Rodríguez, a journalist with the radio station *La Veterana* in Popayán, Cauca, was said to have been attacked by two unknown persons who were said to have shot a firearm when he was entering his workplace. He did not suffer any injury, due to the intervention of police bodyguards who were said to have accompanied him for three months due to the situation of risk he faced.¹⁵³

113. The IACHR learned of a large number of cases of threats against journalists. On December 2, 2010, journalist Ramón Sandoval Rodríguez received several calls to his cell phone; in one of those calls he was told: “the cup has spilled. You should shut up and leave Sabana de Torres, or assume the consequences. You are not the first dog we’ve killed in this town.” Sandoval relates the threat by presenting information he has published about the alleged acts of corruption in the municipal administration.¹⁵⁴ In addition, according to the information received by the Office of the Special Rapporteur, on February 17, 2011, several Colombian non-governmental organizations received an email purportedly sent by the self-styled “Bloque Capital de las Águilas Negras” (“Capital Bloc of the Black Eagles”), which announced: “the time has come to exterminate and annihilate all those persons and organizations who pass themselves off as defenders of human

¹⁵⁰ Ministry of Foreign Affairs of Colombia. Communication DIDHD. GAPID 41308/1809. July 13, 2011. In files of the Office of the Special Rapporteur.

¹⁵¹ El Universal. February 18, 2011. [Atacada casa de periodista Rodolfo Zambrano](#); Federación Colombiana de Periodistas (FECOLPER). August 8, 2011. [Ciento catorce ataques contra periodistas durante el primer trimestre del 2011; grupos paramilitares el mayor depredador de la prensa](#).

¹⁵² According to the information received, journalists were collecting different versions concerning the decision of a foreign company to postpone a mining project when the neighbors lashed out against the team of journalists with sticks and stones, as they were upset by the delay in the project. Both journalists were assisted by the Police and taken to a hospital. Vanguardia. March 19, 2011. [Periodista agredida está bajo pronóstico reservado](#); Knight Center for Journalism in the Americas. March 19, 2011. [Periodista y camarógrafo hospitalizados tras agresión de pobladores con piedras y palos en Colombia](#); RCN. March 18, 2011. [Capturadas cuatro personas por agresión a equipo periodístico en Santander](#).

¹⁵³ The bodyguards along with other police from the local post (CAI: Comando de Atención Inmediata) are said to have pursued the assailants, one of whom was said to have been wounded in the exchange of gunfire and taken to a clinic, while the other assailant was said to have been detained and brought before the Departmental Office for Criminal Investigation of the National Police (SIJIN). Rodríguez notes that he had received threats since he reported on his new program “En Línea FM Noticias” on the involvement of members of the FARC in the elections for mayor of Patía, in southern Cauca. Fundación para la Libertad de Prensa (FLIP). May 26, 2011. [Atentado contra periodista Héctor Rodríguez en Popayán – Cauca](#); El Tiempo. May 26, 2011. [Farc podrían estar tras atentado a periodista en Popayán](#).

¹⁵⁴ El Tiempo. No date. [Amenazan a periodista en Sabana de Torres \(Santander\)](#); Fundación para la Libertad de Prensa (FLIP). December 10, 2010. [Periodista es amenazado en Sabana de Torres, Santander](#).

rights, and even more so those who infiltrate as international NGOs, journalists...”¹⁵⁵ Next the message mentioned persons and entities among which were included the Federación Colombiana de Periodistas (“FECOLPER”) and the journalists Eduardo Márquez González, Claudia Julieta Duque, Daniel Coronell, Hollman Morris, and Marcos Perales Mendoza.¹⁵⁶ According to what was reported, on February 18 representatives of various journalists’ organizations held a meeting in Bogotá with the Committee on Regulation and Evaluation of Risks, which addressed the threat received, and at which possible measures for ensuring the security of persons in danger were discussed.¹⁵⁷ On March 14 once again an alleged threat from the “Bloque Capital de las Águilas Negras” was circulated reiterating the warnings.¹⁵⁸ In this respect, the Office of the Special Rapporteur consulted the State on the measures adopted to ensure the lives and integrity of the persons threatened, in a note sent March 4.¹⁵⁹ In its response of April 13, 2011, the State conveyed to the Special Rapporteurship its repudiation of the threats made against the journalists, reiterated its commitment to defend freedom of expression, highlighted the operation of the Protection Program of the Ministry of Interior and Justice, and noted that measures have even been put in place to protect journalists in zones of violence and in dangerous missions. In its communication, the State recalled that the number of journalists who were beneficiaries of the Program had increased from 14 in the year 2000 to 175 in 2010, while total deaths of journalists have been reduced from 27 from 2001 to 2003 to two from 2008 to 2010. The State explained that the cases of threats mentioned in the communication of March 14 “have been made known to the respective judicial authorities so that they may further the respective investigations.” Finally, it indicates that in the case of journalists Hollman Morris and Claudia Julieta Duque, measures have already been implemented on their behalf in the context of the Protection Program mentioned above.¹⁶⁰

114. The IACHR learned that in late March three pamphlets circulated in the department of El Cauca attributed to the “Águilas Negras, Rastrojos, and Autodefensas Unidas de Colombia-AUC,” in which they declared the “11 journalists and 11 community radio stations” are “permanent military targets.”¹⁶¹ In addition, in August journalist Mary Luz Avendaño, correspondent for the newspaper *El Espectador*, in Medellín, had been forced to leave the country given her elevated risk, even though she was receiving protection from the Municipal Police.¹⁶² The risk was said to have

¹⁵⁵ Anonymous email originating from the email address fenixaguilasnegras@gmail.com. February 16, 2011. In files of the Office of the Special Rapporteur for Freedom of Expression.

¹⁵⁶ Círculo de Periodistas de Caldas. February 18, 2011. [FECOLPER rechaza amenaza de muerte contra su presidente Eduardo Márquez](#); Fundación para la Libertad de Prensa (FLIP)/IFEX. February 18, 2011. [Circula panfleto que amenaza a FECOLPER y cuatro periodistas](#); Reporters Without Borders. February 18, 2011. [Apoyo a cinco periodistas declarados “objetivos militares” en un mail atribuido a las “Águilas Negras”](#).

¹⁵⁷ Telephone interview by the IACHR with representatives of Colombian organizations of journalists. February 22, 2011.

¹⁵⁸ World Association of Community Broadcasters (AMARC). March 21, 2011. [Las “Águilas Negras” amplían su campaña de amenazas contra periodistas y ONG; las autoridades tardan en reaccionar](#); Fundación para la Libertad de Prensa (FLIP). March 22, 2011. [Circula nuevo panfleto contra FECOLPER y cuatro periodistas](#).

¹⁵⁹ Communication from the Office of the Special Rapporteur for Freedom of Expression to the Permanent Mission of Colombia to the OAS. March 4, 2011. Washington D.C.

¹⁶⁰ Ministry of Foreign Affairs. Republic of Colombia. April 13, 2011. Note FIDHD. GAPID No.22090/0955.

¹⁶¹ According to the information received, the pamphlet threatened journalists Silvio Sierra, Fredy Calvache, Antonio Palechor, Ricardo Mottato, Eli Alegría, Gustavo Molina, Carlos Pito, Gustavo Alzate, José Fernando Conejo, Carlos Andrés Gómez, and Dario Patiño, and radio stations Guambía Estéreo, Uswal Nasa Yuwe, Nuestra Voz Estéreo, Renacer Kokonuco, Radio Nasa de Tierradentro, Aires del Pueblo Yanacona, Radio Payumat, Radio Libertad, Voces de Nuestra Tierra, Nasa Estéreo, and Radio Inzá. Asociación de Cabildos del Cauca Indígenas del Norte del Cauca. April 6, 2011. [Colombia: Paramilitares amenazan a periodistas indígenas](#); Reporters Without Borders/IFEX. April 6, 2011. [Once periodistas y diversas estaciones de radio indígenas son blancos de los paramilitares](#).

¹⁶² Fundación para la Libertad de Prensa (FLIP). August 23, 2011. [Periodista de Antioquia se ve obligada a salir del país](#); El Espectador. August 23, 2011. [Periodista de El Espectador se ve obligada a salir del país](#).

originated after the publication of articles on violence between bands of drug traffickers and the collusion of members of the Police, due to which she is said to have received several threatening phone calls as of June 22, 2011.¹⁶³ Indeed, with the information received, on September 29 an alleged member of a criminal band was said to have called the radio station Radio Guatapurí, in the city of Valledupar, to warn that they had been ordered to attack a series of persons in that city, including journalist Ana María Ferrer, who worked with the television program “La Cuarta Columna” on Channel 12 in Valledupar.¹⁶⁴

115. In the last week of May unknown persons broke in, through a window, to the apartment of journalist Gonzalo Guillén while he was outside the country and were said to have stolen an external hard drive with 1,000 gigabytes and a laptop computer. The equipment stolen contained data from journalistic investigations over the last 15 years. Among the information stolen is said to be documentation on issues such as extrajudicial executions, expenditures of the State that are kept secret, and corruption in State security agencies. He asked the Office of the Attorney General to conduct an investigation.¹⁶⁵ The Office of the Special Rapporteur requested information from the Colombian State in the wake of these events and the threats that Guillén was said to have received.¹⁶⁶ In its response of August 4, 2011, the State reported that journalist Guillén has been a beneficiary of the Ministry of Interior and Justice’s Protection Program since July 2007, and that he currently has a mobile protection scheme. He also reported that with respect to the larceny of the journalistic information from Mr. Guillén’s residence, the Office of the 113th Local Prosecutor’s Office (Fiscalía 113 local) is pursuing an investigation into the alleged offense of aggravated larceny (*hurto calificado y agravado*), which is in the inquiry stage to determine who the person or persons responsible might be.¹⁶⁷ As of the preparation of this report, no progress had been reported in that investigation.

D. Espionage against and harassment of journalists by the DAS

116. In its 2009 and 2010 reports, the IACHR reported the information that it had received on illegal activities involving espionage, harassment, and discrediting of journalists, and even death threats against journalists, which were carried out by the Administrative Department of Security (DAS: Departamento Administrativo de Seguridad) from 2002 to 2008. In its annual report

¹⁶³ Fundación para la Libertad de Prensa (FLIP). June 25, 2011. [Grave amenaza contra la vida de periodista de El Espectador en Medellín](#); El Espectador. August 23, 2011. [Periodista de El Espectador se ve obligada a salir del país](#).

¹⁶⁴ According to the information provided, the alleged paid gunman had indicated that the order to assassinate Ferrer was due to information that she disclosed on a functioning criminal group. She is also the director of communications of the Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. In that function she is said to have written numerous articles regarding alleged mismanagement of funds from the mining industry. Police authorities are said to have initiated an investigation and to have offered her measures of protection. Committee to Protect Journalists (CPJ). October 5, 2011. [Periodista provincial recibe amenazas en Colombia](#); Fundación para la Libertad de Prensa (FLIP). October 4, 2011. [Confiesan plan para asesinar a una periodista en Valledupar, Cesar](#); Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. Website: <http://www.comitederegaliascesar.org/Comite/Publico/ComiteEsp.php>

¹⁶⁵ Letter from Gonzalo Guillén to the Attorney General, Viviane Morales. June 2, 2011. Archive of the Office of the Special Rapporteur for Freedom of Expression; El Espectador. July 2, 2011. [“Un expresidente me entregó el libretto de la Operación Jaque”](#); Federación Colombiana de Periodistas (FECOLPER). August 8, 2011. [Ciento catorce ataques contra periodistas durante el primer trimestre del 2011; grupos paramilitares el mayor depredador de la prensa](#).

¹⁶⁶ Communication from the Office of the Special Rapporteur to the Colombian State of July 8, 2011, with respect to: “Situation of journalist Gonzalo Guillen.” In files of the Office of the Special Rapporteur.

¹⁶⁷ Ministry of Foreign Affairs of the Republic of Colombia. Communication DIDHD.GAPDH No. 46620/2034. August 4, 2011. In files of the Office of the Special Rapporteur.

last year the Commission followed up, in particular, on the cases of some of the most besieged journalists: Daniel Coronell, Claudia Julieta Duque, Carlos Lozano, and Hollman Morris.¹⁶⁸

117. During 2011, the IACHR continued following up on the judicial proceedings under way in relation to the illegal activities of espionage and harassment of the above-mentioned journalists. The information received by the Office of the Special Rapporteur indicates that there has yet to be any criminal conviction related specifically to the unlawful acts directed against these journalists. At the same time, the IACHR takes note of the significant progress in the investigation into some of these cases. In the case of journalist Claudia Julieta Duque, for example, the Office of the Third Prosecutor of the National Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General found documents in the offices of the DAS that include information on Ms. Duque updated as of November 2008. Duque has been the target of repeated threats that may have caused her extreme suffering and she is the beneficiary of precautionary measures granted by the IACHR in November 2009. In August 2011, after publishing an article in the *Washington Post* on the abuses of the DAS and U.S.-Colombian relations¹⁶⁹, Duque was possible targeted by stigmatizing accusations by former President Álvaro Uribe.¹⁷⁰ Former President Uribe also potentially made stigmatizing statements against the *Washington Post* correspondent in Colombia, Juan Forero, for the publication of an article on alleged gross irregularities said to have been committed by his administration.¹⁷¹ The press organizations expressed reasonable concern over the possible consequences of those statements.¹⁷²

118. The Colombian State wrote that it had complied with all the protection measures ordered by the IACHR in the case of journalist Claudia Julieta Duque Orrego, who on November 26, 2004, “filed a criminal complaint with the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation owing to the threats allegedly made against her since 2001.” According to the information reported by the State, the journalist said “that she was the victim of an abduction committed in the course of a criminal practice known as the ‘millionaire’s walk’ or the ‘millionaire’s tour’; and that she had been stalked and harassed and her e-mails intercepted by members of State Security agencies (DAS) because of her investigations into and her documentary on the killing of journalist Jaime Garzón.” In its observations on the IACHR’s draft report, the State commented that the investigative work conducted by the Human Rights and International Humanitarian Law Unit of the Attorney General’s Office had “succeeded in implicating State agents in the commission of the crime and is currently focusing on establishing the identity of the agents in order to prosecute them in the Colombian courts. Thus far the investigation has not determined whether any high-ranking government officials had knowledge of or participated in the crimes committed against the journalist.” The State underscored the measures that the Prosecutor on the case had taken to ensure the journalist’s life and personal safety, “and compliance with the

¹⁶⁸ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 140-168; IACHR. Annual Report 2009. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Vol. II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). December 30, 2009. Paras. 135-148.

¹⁶⁹ Washington Post. August 20, 2011. [U.S. Aid Implicated in Abuses of Power in Colombia](#).

¹⁷⁰ Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists “terrorism sympathizers”](#). Semana. August 26, 2011. [FLIP, preocupada por acusaciones de Uribe contra redactores de Washington Post](#).

¹⁷¹ Reporters Without Borders. September 22, 2011. [En espera de una respuesta presidencial ante el temor de asesinato de una periodista víctima del “dasgate”](#); Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists “terrorism sympathizers”](#).

¹⁷² Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists “terrorism sympathizers”](#). Semana. August 26, 2011. [FLIP, preocupada por acusaciones de Uribe contra redactores de Washington Post](#).

orders of the Inter-American Commission on Human Rights regarding the precautionary measures for the journalist and her daughter.”¹⁷³

E. Judicial Actions

119. On May 25, 2011, the Constitutional Court of Colombia issued Judgment C-442-11, by which it found that the judges who sit in cases regarding *injurias* and *calumnias* should narrowly interpret these definitions of criminal conduct so as to favor an “expansive interpretation of the freedom of expression” (“la vis expansiva de la libertad de expresión”), which enjoys a privileged place in the Colombian legal order. It noted that “only willful conduct is subject to sanction,” i.e., that the attribution of certain conduct to a certain person must be done knowingly and with the intent of producing harm. Finally, it reiterated the importance of abiding by the inter-American standards of freedom of expression.¹⁷⁴

120. Despite the judgment mentioned in the previous paragraph, on September 12, 2011, the director of the newspaper *Cundinamarca Democrática*, Luis Agustín González, was said to have been found guilty of the crimes of *injuria* and *calumnia* by the first criminal law judge of Fusagasugá. He had been sued by former governor Leonor Serrano de Camargo, who considered publication of an editorial in 2008 calling into question Serrano’s candidacy for the Senate to harm her honor and good name, for which she was seeking 50 million Colombian pesos in compensation (equivalent to US \$26,000 dollars).¹⁷⁵

F. Regulation of the press during electoral periods

121. The IACHR takes note of Decree 3569 of 2011, “by which provisions of law are issued for preserving public order during the period of elections of Territorial Public Authorities and Legislative Bodies and other provisions are issued.”¹⁷⁶ This new decree preserves, in general, the language of Decree 1800 of 2010,¹⁷⁷ with respect to which the IACHR expressed concern in its 2010 Annual Report.¹⁷⁸

122. In this respect, the IACHR observes first that Decree 3569 maintains the prohibition, on election-day, of “all types of publicity, statements, communiqués, and interviews for political-electoral purposes” by any means of communication.¹⁷⁹ Second, with respect to the “information on

¹⁷³ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights, concerning Human Rights Developments in Colombia in 2011”. p. 15.

¹⁷⁴ Constitutional Court of Colombia. [Judgment C-442-11](#). May 25, 2011.

¹⁷⁵ Fundación para la Libertad de Prensa (FLIP). September 13, 2011. [Condenan al periodista Luis Agustín González por cuestionar a la ex gobernadora Leonor Serrano de Camargo](#); Periódico Metronet. September 14, 2011. [Fallo Contra Periódico Cundinamarca Democrática](#).

¹⁷⁶ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#).

¹⁷⁷ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). The Office of the Special Rapporteur took note, moreover, of the judicial proceeding that was brought by various Colombian organizations through a *tutela* action seeking to annul the articles of Decree 1800 of 2010, which were considered to violate the freedom of expression, press, and information. The domestic courts upheld the legality of the decree. Fundación para la Libertad de Prensa (FLIP). August 23, 2011. [El Acceso a la información en Colombia-Entre el Secreto y la Filtración](#); Council of State, Judgment of July 29, 2010. Writing for the court: Bertha Lucía Ramírez de Páez. Case No. 25000-23-15-000-2010-01.

¹⁷⁸ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 135-137.

¹⁷⁹ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 3; Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 3.

election results," Decree 1800 of 2010 established that on election day, while the election is taking place, the media "may only provide information on the number of persons who have voted..."¹⁸⁰ The wording of the relevant article has been modified in Decree 3569 of 2011, eliminating the word "only" to establish that the media "may provide information on the number of persons who have voted..."¹⁸¹ Finally, the foregoing decree established that "as regards public order, the media shall broadcast, on election day, only information confirmed by official sources."¹⁸² Decree 3569 of 2011 strikes out the word "only," providing that "in respect of public order, on election-day the media shall broadcast the information confirmed by official sources."¹⁸³

123. The IACHR reiterates what it indicated in its 2010 Annual Report to the effect that during electoral periods there may be special restrictions on the right to freedom of expression, yet that constitutional and international guarantees must be strictly respected, particularly those enshrined in Article 13(2) of the Convention. According to this provision, the exercise of the right to freedom of expression "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals." In application of this provision, the IACHR and the Court have already indicated that any restriction must be established in a law both materially and formally and that the restrictions must be clear and precise in scope. In that sense, the IACHR notes that in this case general restrictions were established relying on administrative provisions that are not compatible with the conditions noted above.¹⁸⁴

G. Right of Access to Information

124. The IACHR takes note of the approval, by the Congress of the Republic, of the bill "by which provisions of law are issued to strengthen the legal framework that allows the agencies engaged in intelligence and counter-intelligence activities to perform their constitutional and statutory mission, and issuing other provisions."¹⁸⁵ According to the information received, the provision of law approved is under prior review by the Constitutional Court, which is called for as a statute of constitutional rank (*ley estatutaria*).¹⁸⁶

125. The IACHR expresses concern about some aspects of said law on intelligence and counter-intelligence that could disproportionately affect the right of access to information. First, the provision adds to the Criminal Code the crime of "Revelation of a secret by a private person," which provides: "One who makes known a confidential public document shall be subject to imprisonment

¹⁸⁰ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 7.

¹⁸¹ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 6.

¹⁸² Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 9.

¹⁸³ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 8.

¹⁸⁴ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 135-137.

¹⁸⁵ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, Bill No. 195 of 2011 of the House, "By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued." June 14, 2011.

¹⁸⁶ The Constitution of Colombia establishes at Article 153: "The approval, amendment, or derogation of *leyes estatutarias* will require the absolute majority of the members of Congress and shall be done in a single legislature. This process shall include a prior review by the Constitutional Court of the constitutionality of the proposed legislation. Any citizen may come forward to defend or challenge it."

of five to eight years, unless it is done pursuant to a constitutional or statutory duty.”¹⁸⁷ Nonetheless, in Chapter VI (Confidentiality of Intelligence and Counter-intelligence Information) the law provides: “The mandate that it be confidential is not binding on journalists or the media when they are performing their journalistic function of serving as a check on governmental power, in the context of the self-regulation of journalism and the constitutional case-law; they in any event are obligated to keep their sources confidential.” The IACHR recalls in this regard that the public authorities and public servants have the exclusive responsibility of protecting the confidentiality of any secret information legitimately under their control. Other individuals, including journalists and representatives of civil society, should never be subject to sanctions for the mere publication or subsequent dissemination of this information, independent of whether it has been leaked, unless they commit fraud or another offense in order to obtain the information.¹⁸⁸ The IACHR further recognizes the partial protection that the law grants for whistleblowers¹⁸⁹ and recalls that whistleblowers who in good faith disclose information on statutory violations, gross cases of mismanagement of public agencies, grave threat to health, safety, or the environment, or a violation of human rights or humanitarian law should be protected from statutory, administrative, or labor sanctions.¹⁹⁰

126. In its observations on this report, the State wrote that “with regard to freedom of information and the intelligence and counterintelligence services provided by the Colombian State (...), the statutory law on intelligence and counterintelligence meets the specifications set by the Constitutional Court for classifying certain information: (i) clearly and precisely stated terms; (ii) a written explanation of the rationale and proportionality of the decision to deny access to certain information; (iii) the time period that the information will be kept classified; (iv) the system for custodianship of that information; (v) the checks on such decisions, and (vi) the existence of judicial remedies and actions by which to challenge a decision to classify certain information.” The State underscored the fact that “the law does not violate either freedom of the press or freedom of expression.” It also observed that paragraph 4 of Article 33 provides that “the classification period is not binding upon either journalists or the communications media when they are engaging in watchdog journalism, following the rules by which the media and journalists regulate themselves and provided they are acting in accordance with constitutional jurisprudence; in all events, journalists and the media would be required to guarantee the confidentiality of their sources.” For the State, this provision elevates the Constitutional Court’s jurisprudence on the subject to the rank of statutory law. That jurisprudence holds that “classification is not binding upon the media, who are liable only if they reveal their sources.” In its observations, the State explained that the justification for the provision, “as the Court itself has explained, is that the responsibility of the media is to serve as the watchdog of public power. This function could not be properly performed if the media were limited to the information provided to them.” The State explained that the “exception to the classification principle is made for journalists but not for all organizations in civil

¹⁸⁷ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, 195 of 2011 House: “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011. Art. 45.

¹⁸⁸ Joint Declaration by the rapporteurs on freedom of expression of the United Nations, the OAS, and the OSCE (2004). Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=319&IID=2>

¹⁸⁹ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, 195 of 2011 House “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011. Art. 39: “[...] In any event, the public servants of the agencies that undertake intelligence and counterintelligence activities may report the criminal activities of which they come to learn directly or through a representative of the intelligence agency, and in conditions that make it possible to ensure their security and integrity, guaranteeing the protection of sources, means, and methods....”

¹⁹⁰ [Joint declaration by the rapporteurs on freedom of expression of the United Nations, the OAS, and the OSCE \(2004\)](#).

society, since the general principle of intelligence is that it must be kept confidential because it has a close bearing on national security and defense. However, lawmakers were of the view that because of the watchdog function that the media perform, journalists must be allowed to use classified information without committing a crime. On the other hand, if any organization in civil society was allowed to use classified information without committing an offense, no matter how many mechanisms were instituted to keep that information secure any person could gain access to that information by unlawful means and publish it, thereby jeopardizing national security, national defense, international relations and other national interests." The State observed that the Constitutional Court has sanctioned the creation of the classified information system "to ensure protection of the fundamental rights of third parties that may be disproportionately affected if certain information is made public and given the need to keep certain information confidential in order to safeguard national security and defense." The State added that "public officials who have access to this information are thus obligated not to disclose it; if they disclose such information they will face criminal and disciplinary consequences." It also pointed out that the Constitutional Court held that "disclosure [of classified information] shall have criminal and disciplinary consequences only for the official who discloses the information."¹⁹¹

127. Furthermore, in 2011 the IACHR received information on the exercise of the right of access to information by groups of small farmers in the department of Atlántico. The various groups of small farmers requested information from the Colombian Rural Development Institute ("*INCODER*" *Instituto Colombiano de Desarrollo Rural*) with respect to the implementation of agrarian programs in their respective subdivisions, including programs in training, social services, physical infrastructure, rural housing, adaptation of lands, technical assistance, financing, and legal support.¹⁹² On several occasions the groups of small farmers have pursued the special constitutional remedy known as *acción de tutela* after receiving responses from INCODER to their filings in exercise of their right to petition that they considered unsatisfactory. Those actions were resolved favorably in the cases of the subdivisions of Los Guayacanes of the municipality of Repelón,¹⁹³ Banco Totumo of the municipality of Repelón,¹⁹⁴ and Maramara of the municipality of Baranoa.¹⁹⁵ The judicial rulings in these cases, considering the "generic and incomplete nature of the response" from INCODER, order "INCODER to address each and every one of the petitions filed, making a clear pronouncement on them ... without the use of evasive or elusive language, so as to consider the subject matter of the petition and be in keeping with what is requested" within 48 hours.¹⁹⁶ INCODER was said to have challenged the judicial decisions in three of these cases;¹⁹⁷ in the case of the subdivision of Los Guayacanes, the ruling in the *tutela* action was already upheld on appeal.¹⁹⁸

¹⁹¹ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. "Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011". pp. 14 and 15.

¹⁹² Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011; Thirteenth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011; Twelfth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁹³ Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁹⁴ Thirteen Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011.

¹⁹⁵ Twelfth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011.

¹⁹⁶ Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011; Thirteenth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011; Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁹⁷ Twelfth Civil Court of Barranquilla. Tutela Action 2011-00230. Motion to Appeal (Recurso de Impugnación). September 1, 2011. See also information sent by the Colectivo Mujeres al Derecho to the Rapporteurship on "events that constitute violations of the right of access to information of women and rural communities in the departments of Atlántico

128. The IACHR recalls that principle 4 of the Declaration of Principles on Freedom of Expression establishes that “Access to information held by the state is a fundamental right of every individual” and recognizes as a good practice the judicial response of guaranteeing the exercise of this right in the cases mentioned. At the same time, and without prejudice to the possible rulings on first and second appeal in these proceedings, the IACHR expresses its concern given indicia of the repeated failure of INCODER to respect the right of access to information.

7. Costa Rica

129. The Office of the Special Rapporteur was pleased to receive two judgments from the Constitutional Chamber of the Supreme Court of Costa Rica that strengthen the right to access to public information and freedom of expression. Judgment No. 03320 of March 18, 2011 ordered the Ministry of Labor to provide the newspaper *El Financiero* with a list of companies and individuals to whom warnings had been issued for failing to pay minimum wage to its employees between August and December 2010. According to the information received, the Ministry of Labor had refused to give this information to journalist Alejandro Fernández of *El Financiero*. Nevertheless, the Constitutional Chamber ruled that “the requested information is of clear public interest, in that it refers to violations for the failure to pay minimum wage.”¹⁹⁹

130. On March 29, 2011, the Constitutional Chamber handed down Judgment No. 04160, which found that a decision made by the Board of Governors of the University of Costa Rica on February 1, 2011 amounted to a threat to freedom of expression and a violation of academic freedom. The decision was to prevent James Watson, Nobel Laureate in Medicine, from giving a conference on genetics and DNA at the university because in the past he had made discriminatory statements against various minorities. According to the information received, James Watson was ultimately able to give the conference, and the University Board of Governors subsequently acknowledged that the prohibition of this academic activity had been inordinate. The Constitutional Chamber found that the actions of the university authorities amounted to a “threat to violate freedom of expression and academic freedom, given that the decision of the University Board of Governors to request the suspension of a conference was a way to silence *a priori* the speaker’s expressions of thought, ideas, opinions, beliefs, convictions, or value judgments, which constitutes prior censorship.”²⁰⁰

...continuation

and Magdalena, Colombia, by the Colombian State,” received on August 8, 2011 and September 30, 2011. In the files of the Office of the Special Rapporteur.

¹⁹⁸ Superior Court, Judicial District of Barranquilla. Tutela Action on appeal. *Abelardo Prentz Norieg (sic) and Sergio Rafael Cabarcas Torrenegra*. October 4, 2011.

¹⁹⁹ Constitutional Chamber of the Supreme Court of Costa Rica. March 18, 2011. *Decision 2011003320*. Available at:

http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&cmbDespacho=0007&txtAno=2011&strNomDespacho=Sala%20Constitucional&nValor2=506651&IResultado=&IVolverIndice=¶m01=Sentencias%20por%20Despacho¶m2=30&strTipM=T&strDirSel=directo; *El Financiero*. March 18, 2011. *Sala IV ordenó al Gobierno a entregar listado de infractores del salario mínimo a El Financiero*. Available at: http://www.elfinancierocr.com/ef_archivo/2011/marzo/20/economia2719517.html

²⁰⁰ Constitutional Chamber of the Supreme Court of Costa Rica. March 29, 2011. *Decision 2011004160*. Available at:

http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=1&nValor1=1&nValor2=508396&strTipM=T&IResultado=1; *La Nación*. April 15, 2011. *Sala IV condena a la UCR por censura previa*. Available at: <http://www.nacion.com/2011-04-15/AldeaGlobal/UltimaHora/AldeaGlobal2749216.aspx>

131. On June 27, the full session of the Legislative Assembly of Costa Rica resolved, by a majority, to table the Freedom of Expression and Press Act bill when it rejected a motion to keep the initiative on the parliamentary agenda for four more years, a decade after it was first introduced to Congress.²⁰¹ The bill proposed reforms to the Criminal Code that would introduce the doctrine of actual malice by establishing that statements alleged to be libelous, slanderous, or defamatory are only punishable when they have been “made with reckless disregard for the truth or knowledge of their falsehood.” The bill excludes the offense “when it involves the publication or reproduction of information or value judgments on matters of public interest that are offensive to honor or public credit, that have been voiced by other collective communications media, news agencies, public authorities, or private individuals with authorized knowledge of the facts, provided that the publication indicates the source of the information.” The initiative also would have incorporated professional secrecy for journalists, as well as the conscience clause, into Costa Rican law. The original version of the bill, introduced in 2001 by media directors, was tabled in 2005 upon the expiration of the four-year term. In that year, a special joint committee again took up the text of the bill, passed it, and forwarded it to the full legislature; however, it was never voted on.²⁰²

132. The Office of the Special Rapporteur learned that two cameramen from Channels 7 and 6 were assaulted by police on December 30, 2010, while they were covering a police operation in a neighborhood in southern part of San José. According to reports, one of the reporters was held down and hit by a police officer while the other was assaulted with a metal baton. Costa Rican Police authorities considered the actions of their subordinates to be “abusive,” “excessive,” and unacceptable, and announced that the officers involved would be subjected to disciplinary proceedings.²⁰³

133. Principle 9 of the Declaration of Principles on Freedom of Expression establishes that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

134. On July 19, the Constitutional Chamber of the Supreme Court of Costa Rica rejected on the merits a writ of *amparo* [petition for a constitutional remedy] filed by the newspaper *Extra* against the Honor and Ethics Tribunal of the Association of Journalists. According to what this Office of the Special Rapporteur has learned, the Honor and Ethics Tribunal issued a communiqué condemning the graphic content of a report on a traffic accident and joined “many people” in protesting this publication. The newspaper *Extra* alleged that the Honor and Ethics Tribunal infringed its right to a defense and to freedom of expression by joining in the protests of one segment of the public and by issuing a decision without providing the paper with an opportunity to defend itself, which reportedly resulted in financial harm. The Constitutional Chamber held that the decision of the Honor and Ethics Tribunal of the Journalists’ Association “is not punitive in nature” and is “a mere

²⁰¹ La Nación. June 29, 2011. *Diputados entierran ley sobre libertad de expresión*. Available at: <http://www.nacion.com/2011-06-28/EIPais/diputados-entierran-ley-sobre-libertad-de-expresion.aspx>; Primera Plana. July 1, 2011. *El proyecto de libertad de expresión y prensa se archivó a consecuencia de una sacada de clavo por las denuncias de corrupción*. Available at: http://www.primeraplana.or.cr/app/cms/www/index.php?pk_articulo=4073

²⁰² Legislative Assembly of the Republic of Costa Rica. August 11, 2005. *Proyecto de Ley de Libertad de Expresión y Prensa*. No. 15974 Available at: <http://www.asamblea.go.cr/Centro de Informacion/Consultas SIL/default.aspx>; La Nación. Undated. *Proyecto de Ley de Libertad de Expresión y Prensa*. Available at: http://www.nacion.com/ln_ee/ESPECIALES/libertad/reforma_ley.html

²⁰³ La Nación. December 31, 2010. *Investigan golpiza de policías contra periodistas*. Available at: <http://www.nacion.com/2010-12-31/Sucesos/UltimaHora/Sucesos2637551.aspx>; Knight Center for Journalism in the Americas. January 18, 2011. *Autoridades costarricenses investigan golpiza policial a periodistas de televisión*. Available at: <http://knightcenter.utexas.edu/es/blog/autoridades-costarricenses-investigacion-golpiza-policial-periodistas-de-television>

expression of disagreement (...) stemming from the protest of many people who are displeased with the graphic content” of the report. Therefore, in the opinion of the Constitutional Chamber, “the appellee is not required to give notice to the appellant of its intentions, or of its way of thinking, with respect to the publications regarding the traffic accident.”²⁰⁴ In relation to the same case, on August 26, 2011, the Constitutional Chamber of the Supreme Court dismissed three *amparo* petitions filed by the Association of Journalists against the newspaper *Diario Extra*, the television station *TV Extra 42*, and the newspaper *La Prensa Libre*, all of which are owned by the Extra Group. According to reports, the three media outlets released news items critical of the Honor and Ethics Tribunal of the Association of Journalists without consulting with representatives of that organization with regard to their position. The Honor and Ethics Tribunal requested the right of reply or correction, but the media outlets did not acquiesce. In view of this situation, the Honor and Ethics Tribunal filed a writ of *amparo* before the Constitutional Chamber, which was dismissed because the petitioners failed to describe in detail how the publications had affected their honor and reputation, or which information was false or inaccurate.²⁰⁵

8. Cuba²⁰⁶

135. The IACHR learned of a hunger strike being staged by journalists Pedro Argüelles Morán and Albert Santiago Du Bouchet Hernández, both members of the “Group of 75” dissidents detained in 2003 and the subject of IACHR Case 12,476 (Oscar Elías Biscet *et al.*). Argüelles Morán had allegedly gone on a hunger strike to protest the pressure being exerted by the authorities to get him to leave the country if they released him. He went off his hunger strike when the authorities promised that he and ten other dissidents being held could remain in Cuba once released. For his part, Du Bouchet Hernández’ hunger strike had allegedly lasted 23 days, and was to honor the first anniversary of the death of dissident Orlando Zapata and to call attention to his own imprisonment and that of other political prisoners.²⁰⁷

²⁰⁴ The Honor and Ethics Tribunal of the Association of Journalists of Costa Rica ruled in the following terms: “The Honor and Ethics Tribunal of the Association of Journalists of Costa Rica joins the protest of many people over the content, especially the graphic content, of the article in the newspaper *Diario Extra* on the accident in which soccer player Dennis Marshall and his wife lost their lives on the highway to Limón. This tribunal condemns such action in view of Article 20(d) of Organic Law No. 4420 of the Association of Journalists, as said media outlet has crossed the line of acceptable reporting on accidents by disregarding ethics and failing to respect human suffering and the sentiments of the relatives. Neither the editors nor the owners of the media, nor the journalists, should consider themselves the owners of the information; it should not be treated as merchandise, but rather as a fundamental right of the citizens.” Association of Journalists of Costa Rica, Honor and Ethics Tribunal. June 30, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Supreme Court of Costa Rica. Constitutional Chamber. July 19, 2011. *Judgment 09319*. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=516466&strTipM=T&strDirSel=directo; Association of Journalists of Costa Rica. August 10, 2011. *Sala rechaza amparo de la Extra*. Available at: <http://www.colper.or.cr/comunicados/sala.htm>; La Nación. June 24, 2011. *Diario Extra recibe fuertes críticas por portada sobre muerte de jugador*. Available at: <http://www.nacion.com/2011-06-24/EIPais/diario-extra-recibe-fuertes-criticas-por-portada-sobre-muerte-de-jugador.aspx>

²⁰⁵ Supreme Court of Costa Rica. Constitutional Chamber. August 26, 2011. *Judgment 11576*. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=525193&strTipM=T&strDirSel=directo; Supreme Court of Costa Rica. Constitutional Chamber. Undated. *Matters of the Constitutional Chamber regarding Freedom of Expression and the Press*. Available at: <http://www.poder-judicial.go.cr/salaconstitucional/votos%20por%20tema.htm>; *Diario Extra*. September 10, 2011. *Sala IV defiende libertad de prensa*. Available at: <http://www.diarioextra.com/2011/setiembre/10/nacionales01.php>

²⁰⁶ This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

²⁰⁷ Reporters Without Borders. February 4, 2011. *Jailed Journalists on Hunger Strike*; Committee to Protect Journalists (CPJ). February 9, 2011. *Press Cuba to keep promise to free journalists*; Agence France Presse (AFP). February 10, 2011. *Un preso político cubano levanta su huelga de hambre de ocho días*. [One Cuban political prisoner ends eight-day hunger strike]

136. The Office of the Special Rapporteur for Freedom of Expression received information to the effect that temporary arbitrary detentions were still being made and could last hours or even a few days. The victims were persons identified as opponents of the regime and the idea was to prevent them from participating in political activities or to respond to demonstrations or the circulation of messages critical of the Government. According to the information received, another common practice is to stage acts of censure in front of the homes of political dissidents, as a way to harass them and prevent them from going out in public. These events, during which government slogans are yelled and patriotic anthems and revolutionary music are played full blast, tend to be accompanied by arrests and attacks on the members of the opposition. According to the reports received, Cuban dissident organizations reported between 2,668 and 2,784 arrests between January and September 2011, averaging at least 333 detentions a month in the first eight months of 2011. However, the dissident organizations reportedly saw a sizeable increase in arrests in September, with between 486 and 563 persons taken into custody. According to reports received, 80 persons were allegedly either convicted or tried on political grounds; 63 of these were reported to be in prison.²⁰⁸ The increase in arrests prompted a public communiqué from the British Embassy in Cuba, in which the diplomatic mission called upon the State to allow peaceful protests and expressed concern over the short-term detentions of political and human rights activists, and the aggressive treatment against opposition organizations like the *Damas de Blanco* [Ladies in White].²⁰⁹

137. According to information the Commission received, at least a dozen journalists who collaborated with the independent news agency *Hablemos Press* had reportedly been taken into temporary custody or attacked in the days before and during the Sixth Congress of the Cuban Communist Party, held in Havana April 16 – 19, 2011. On April 15, the *Hablemos Press* correspondent in Guantánamo, Enyor Díaz Allen, had allegedly been attacked by two persons who started by yelling pro-government slogans at him and then fractured one of his arms and inflicted a head injury on him. He was later allegedly detained by the Police, treated in a hospital and then jailed for four days.²¹⁰ Raúl Arias Márquez and Elier Muir Ávila, correspondents in the provinces of Morón and Ciego de Ávila, were detained in Márquez' home on April 5 and 6 by Police and State Security agents. They had reportedly been warned that they would be jailed if they continued to practice their journalistic activities.²¹¹ On March 31, State Security agents allegedly arrested the *Hablemos Press* correspondent Idalberto Acuña Carabeo at his home in Havana when he refused to turn over photographs he had taken just hours earlier at a protest at the *Central de Trabajadores de Cuba* (CTC).²¹² On April 16, a group of police and State Security agents had allegedly kept the *Hablemos Press* correspondent in Mayabeque province, Luis Roberto Arcia Rodríguez, trapped inside his home for 12 hours to prevent him from going to Havana to cover the Communist Party

²⁰⁸ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. October 3, 2011. [Algunos actos de represión política registrados en Cuba durante septiembre de 2011](#) [Some acts of political repression recorded in Cuba in September 2011]; Centro de Información Hablemos Press. October 3, 2011. [Informe mensual de violaciones de los derechos humanos](#). [Monthly report on human rights violations]; EFE News Service. October 4, 2010. [Septiembre malo para la disidencia](#). [A Bad September for the dissident movement]; Inter-American Press Association (IAPA). September 29, 2011. [IAPA condemns increased harassment in Cuba](#); Reuters. October 3, 2011. [Grupo disidente Cuba reporta histórica cifra detenciones mensuales](#). [Cuban dissident group reports historic figure on monthly arrests]

²⁰⁹ Embassy of Great Britain in Cuba. September 29, 2011. [Recent reports of short term detentions in Cuba, British Ambassador Dianna Melrose Comments on the Situation](#).

²¹⁰ Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

²¹¹ Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

²¹² Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#) [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX, April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

Congress.²¹³ Something similar happened on April 16, when the home of the Hablemos Press correspondent in Melena del Sur, Sandra Guerra Pérez, was surrounded for two days by some 20 police and State Security agents to prevent her from travelling to Havana.²¹⁴ On April 15, two State Security agents showed up at the offices of Hablemos Press in Havana, to warn journalists Robert de Jesús Guerra Pérez, Magaly Norvis Otero Suárez, Ignacio Estrada Cepero and José Alberto Álvarez not to go outside while the Communist Party Congress was in session or they would be jailed.²¹⁵

138. According to the information received, journalist and political dissident Guillermo Fariñas has reportedly been held in custody for hours on several different occasions since December 2010. In December, the State refused to give Fariñas authorization to travel to Strasbourg, France, to receive the Sakharov Prize, which the European Parliament awards each year for freedom of conscience.²¹⁶ On January 27, Fariñas was allegedly arrested twice within 24 hours, along with other dissidents, accused of making a “public scandal” for their participation in anti-government protests.²¹⁷ On February 23, Fariñas was detained yet again, together with another 46 activists in Santa Clara, who were attempting to mark the first anniversary of the death of another dissident, Orlando Zapata. Fariñas was released 27 hours later. In addition to being detained, some 200 Government sympathizers had allegedly surrounded the women of the opposition group known as “Damas de Blanco” [Ladies in White] to hurl insults and slogans in support of the government. On April 6, Fariñas was arrested yet again, along with a dozen activists from the *Foro Antitotalitario* and the Santa Clara Central Coalition, after showing up at a prison to protest the arrest of various members of the opposition who had been detained just moments earlier. The authorities kept Fariñas under house arrest and took away his passport.²¹⁸ Fariñas and another 26 dissidents were reportedly detained on September 15 in Santa Clara, as they were preparing for a demonstration. Fariñas and the others were released some hours later.²¹⁹

139. On November 1 2011, Guillermo Fariñas was detained again when he tried to access the provincial hospital “Arnaldo Milian Castro” to know about the health situation of Alcides Rivera, a dissident who was hospitalized by a hunger strike he initiated a month ago. A group of security men impeded his way to the hospital. He was beaten, handcuffed and was transferred in a police car to the police unit. He was released on November 3, 2011.

²¹³ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

²¹⁴ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

²¹⁵ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

²¹⁶ Europa Press. December 14, 2010. [Guillermo Fariñas no logra el permiso para salir de Cuba](#). [Guillermo Fariñas not given permission to leave Cuba]; *El Mundo*. December 13, 2010. [Fariñas responsabiliza a Fidel y no a Raúl por no dejarle recoger el premio Sájarov](#). [Fariñas blames Fidel, not Raúl for not allowing him to go to receive his Sakharov Prize]

²¹⁷ Inter-American Press Association (IAPA). January 28, 2011. [IAPA calls for end to repression in Cuba](#); Agence France Presse (AFP). January 28, 2011. [Cuba: Guillermo Fariñas liberado tras segundo arresto en 24 horas](#). [Cuba: Guillermo Fariñas released after second arrest in 24 hours]

²¹⁸ La Voz de Galicia. April 7, 2011. [El opositor cubano Fariñas, en arresto domiciliario tras otra detención](#). [Cuban dissident Fariñas under house arrest after being detained again]; EFE News Service. April 7, 2011. [Disidente cubano Guillermo Fariñas, de nuevo preso](#). [Cuban dissident Fariñas jailed again]

²¹⁹ Europa Press. September 19, 2011. [Arrestan a unos 150 opositores cubanos en los últimos días](#). [Some 150 members of Cuban opposition arrested in recent days]; EFE News Service. September 16, 2011. [Más de 20 opositores fueron detenidos en Cuba](#). [More than 20 members of Cuban opposition arrested in Cuba]

140. As the detentions increased and the harassment of political and human rights activists was heating up, various leaders of dissident groups were allegedly arrested. According to the information received by the Office of the Special Rapporteur, on September 9, former political prisoners Ángel Moya Acosta, José Daniel Ferrer and Raúmel Vinajera were reportedly detained again in Palma de Soriano, in eastern Cuba.²²⁰ On September 15, opposition leaders and former political prisoners Librado Linares García and, again, Ángel Moya Acosta, were detained, as was the leader of the Central Opposition Coalition, Idania Yáñez Contreras. The arrests were allegedly made as the activists were preparing for the march called “Boitel and Zapata Live,” which would go through a number of Cuban cities.²²¹ On September 27, leaders of the Red Cubana de Comunicadores Comunitarios [Cuban Network of Community Journalists], Martha Beatriz Roque and Arnaldo Ramos Lauzarique were detained, as was Berta Soler, one of the founders of the Damas de Blanco [Ladies in White] and wife of former political prisoner Ángel Moya Acosta. The three were detained as they were on their way to a police station to intercede for a number of persons previously arrested; they were reportedly beaten as they were being transported in police vehicles.²²²

141. The IACHR received information concerning detentions, acts of aggression and harassment against the Damas de Blanco, an organization made up of women related to political prisoners. According to the report received, on September 9, at least 22 women from the Damas de Blanco were allegedly detained for several hours in Havana and Santiago, while they were participating in a celebration marking the feast of Our Lady of Charity, also known as Our Lady of Cobre.²²³ On September 24, several dozen Ladies in White met at a member’s home to organize a peaceful march and attend mass at the Church of La Merced, in Havana. However, between 200 and 300 people had gathered outside the house to yell pro-government slogans and prevent the group of women from leaving the house. When the members of the Ladies in White attempted to get the peaceful march underway, there was reportedly a struggle with the pro-government demonstrators; a number of the women were beaten.²²⁴ On October 22, 11 Ladies in White were allegedly detained and beaten in Palma Soriano, as they were attempting to attend mass at the cathedral in Santiago. According to the information received, the activists were released some hours later.²²⁵

²²⁰ EFE News Service. September 9. [Esposas de dos expresos del grupo de los 75 denuncian detención](#). [Wives of two former prisoners of Group of 75 denounce arrest]; Net for Cuba. September 12, 2011. [Two ex-prisoners of conscience remain arbitrarily arrested](#).

²²¹ Diario de Las Américas. March 17, 2011. [Marcha por la Libertad cobra fuerza en Cuba](#). [March for Freedom Gains Momentum in Cuba]; ABC. October 5, 2011. [Ofensiva de los Castro con 600 encarcelados en un mes](#). [Castro brothers’ offensive with 600 persons arrested in one month]; Tellus Folio. September 19, 2011. [La misión de la Dame in Blanco: Lottare per la libertà del popolo cubano](#); La revolución de los gladiolos. September 10, 2011. [Idania Yáñez Contreras, presidenta de la Coalición Central Opositora](#).

²²² Inter-American Press Association (IAPA). September 29, 2011. [IAPA Condemns Increased Harassment in Cuba](#); El Nuevo Herald. September 28, 2011. [Brutal agresión a líderes de la disidencia cubana](#). [Leaders of Cuban dissident movement face brutal aggression]

²²³ Milenio. September 9, 2011. [Liberados opositores cubanos tras ser detenidos temporalmente en procesión](#). [Leaders of Cuban opposition released after being detained temporarily in march]; La Verdad.Es. September 19, 2011. [26 disidentes detenidos en Santiago y La Habana](#). [26 dissidents detained in Santiago and Havana]

²²⁴ Agence France Presse (AFP). September 24, 2011. [Seguidores del Gobierno cubano acosan e impiden a Damas de Blanco ir a misa](#). [Supporters of Cuban Government harass Ladies in White and prevent them from attending mass]; EFE News Service. September 24, 2011. [Oficialistas acosan a Damas de Blanco y les impiden ir a misa por día Merced](#). [Government supporters harass Ladies in White and prevent them from attending mass on the feast of Our Lady of Mercy]

²²⁵ Cubaencuentro. October 2, 2010. [Detienen y golpean a mujeres en Palma Soriano](#) [Women detained and beaten in Palma Soriano]; Radio Martí. No date. [Entrevista al ex preso político José Daniel Ferrer García](#). [Interview with former political prisoner José Daniel Ferrer García]

142. The information received states that on April 7, Spanish journalist Carlos Hernando, collaborator with the *Intereconomía* press group and the creator of a documentary on Guillermo Fariñas was allegedly detained and expelled from the country by Cuban authorities, who accused him of “counter-revolutionary activity”.²²⁶ In the first week of September, Cuban authorities reportedly took away the press credentials of Mauricio Vicent, who for 20 years had been the Spanish newspaper *El País* correspondent in Cuba. Without his press credentials, he cannot practice journalism in Cuba. The International Press Center, part of the Ministry of Foreign Affairs, had allegedly justified the decision by pointing to Vicent’s coverage, which it claimed conveyed “a biased and negative image” of Cuban reality.²²⁷

143. In 2011, the Internet was well out of reach of the majority of the population, owing to the high cost of internet service, the slow connection speeds, and restrictions that limit or obstruct the connection.²²⁸ The situation reported in the 2010 report has not changed in any significant way.²²⁹

144. In February 2011, the government announced that Cuba would be connecting to a submarine fiber optic cable installed in cooperation with Venezuela, which would increase internet data transmission speed by 3,000 times, and would increase the percentage of persons with access to the net, whereas just 3% of the population has access at the present time; it would also lower the cost of international calls. However, thus far there are no reports that the fiber optic cable has been made accessible to the general public; the high rates and usage and connection restrictions reported in previous years still persist.²³⁰

145. Resolution 179/2008 reportedly was still in effect in the Cuban legal system in 2011. That resolution establishes a set of “Regulations for public internet service providers that offer internet services in hotels, post offices and other entities in the country, and where internet search engines and national and international e-mail services are offered to natural persons.”²³¹ One provision that called the IACHR’s attention was the following requirement for providers: “take the measures necessary to block access to sites whose content is inimical to social and moral interests and good conduct; as well as the use of applications that affect the integrity or security of the State.” That same provision states, *inter alia*, that: “providers shall observe the orders issued by the institutions charged with the country’s defense in the event of emergency situations, and perform

²²⁶ El Mundo. April 8, 2011. [Carlos Hernando: “Se me ha pasado pero han sido momentos muy difíciles”](#). [Carlos Hernando: It happened, but there were some very difficult moments]; Intereconomía. April 7, 2011. [Carlos Hernando detenido por “contrarrevolucionario”](#). [Carlos Hernando detained as counterrevolutionary]

²²⁷ El País. September 5, 2011. [Apoyo de FAPE y Reporteros sin Fronteras al corresponsal de El País en Cuba](#). [FAPE and Reporters Without Borders Come to Defense of El País correspondent in Cuba]; Knight Center for Journalism in the Americas. September 5, 2011. [Unhappy with “negative” coverage, Cuba revokes press credentials of foreign correspondent](#).

²²⁸ There are two webs in Cuba: one domestic, with limited access to information resources, and the other international. The average hourly cost of connecting to the domestic network is close to US\$1.63, while the average hourly cost of connection to the international network is US\$5.48, in an economy where the average monthly salary is US\$20. In January the government reportedly announced an improvement in satellite connections that would increase connectivity by 10%. Reporters Without Borders. 2010. [Internet Enemies](#); Cf. Inter-American Press Association (IAPA). April 2011. [Country reports: Cuba](#).

²²⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc.5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 186 *et seq.*

²³⁰ BBC News. February 9, 2011. [Cuba welcomes new Internet cable link with Venezuela](#); Generación Y. August 30, 2011. [¡Dame Cable!](#) [Give Me Cable!].

²³¹ Ministry of Information Technology and Communications. [Resolución No 179/2008](#); Ministry of Information Technology and Communications. [Resolución 55/2009](#).

the immediate functions necessary to secure the defense and security of the State.” Under Article 21 of that resolution, when a service provider fails to comply with these regulations, it may have its license and any contracts signed temporarily or permanently suspended.

146. Resolution 55/2009, which took effect in June 2009, remained in effect in 2011. That resolution established the same regulations referenced in the preceding paragraph, but this time for the so-called Internet Service Providers for Storage, Hosting, and Applications.²³² According to this resolution, the regulations include those Cuban legal persons who have received an operating license as a Public Service Provider for Internet Access, including those that rent physical space so that the client can place its own computer there; those who provide the site-hosting service, applications, and information; and those who provide applications services to third parties.

147. Here, the IACHR must reiterate that the Internet “is an instrument with the capacity to fortify the democratic system, assist the economic development of the region’s countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population’s active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions.”²³³

9. Ecuador

148. The Office of the Special Rapporteur views positively the importance placed upon the hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the Inter-American Commission on Human Rights (IACHR) in Washington, D.C. on October 25, 2011. It was attended by high-ranking officials of the Ecuadorean State and members of various civil society organizations. This office found it to be a productive hearing, at which both the state and civil society had the opportunity to express their positions, concerns, and criteria with respect to the situation of freedom of expression in the country. The information obtained as a result of the hearing is set forth in the corresponding sections of this report.

A. Assaults and attacks on media or journalists

149. The Office of the Special Rapporteur received information that Guido Manolo Campaña, the sports writer for the newspaper *El Universo* of Guayaquil, was apparently kidnapped, beaten, and threatened on December 2, 2010, while doing research in the coastal area of Esmeraldas. According to that information, the journalist was investigating a case of identity theft allegedly perpetrated by a soccer player. The reporter received documents in the town of Muisne that would prove the allegation, but upon his return by bus to the city of Esmeraldas, two armed men in a pickup truck intercepted the bus. They pointed their weapons at the journalist and took him to an unknown location where they bound his hands and feet, beat him, threatened to kill him, and interrogated him about the facts he was investigating and the sources who had provided the information. The kidnappers allowed Campaña to answer a phone call from the newspaper on his

²³² Ministry of Information Technology and Communications. [Resolución 55/2009](#).

²³³ IACHR. Annual Report 1999: [Annual Report of the Special Rapporteur for Freedom of Expression 1999](#). Chapter II. Assessment of the Situation of Freedom of Expression in the Hemisphere: D. The Internet and Freedom of Expression.

cell phone, and forced him and his editors to promise not to publish the information. Police and judicial authorities in Esmeraldas launched an operation to try to find the journalist, but early that night he was released in an Esmeraldas neighborhood. The kidnappers had destroyed his camera, tape recorder, cell phone, and notes and documents he had gathered. The newspaper published the investigation days later.²³⁴

150. According to information received, at least five shots were fired on May 7 in the city of Manta at the exterior of the building where the *Ediasa* publishing group is headquartered. *Ediasa* owns the newspapers *El Diario* and *La Marea*, as well as the television channel *Manavisión*. The media company reported the act so that a police investigation would be opened.²³⁵

151. The Office of the Special Rapporteur was informed that on December 17 a group of armed police officers entered and searched the Quito offices of the magazine *Vanguardia*, and reportedly confiscated some 40 computers and searched journalists and their personal belongings for weapons. According to information provided to the Office of the Special Rapporteur, the Police entered with a warrant for the preventive seizure of assets because the magazine allegedly owed \$14,000 in rent payments on the property. The warrant allowed for a three-day period in which to make the payment, but the police executed it immediately. The magazine's director, Juan Carlos Calderón, is co-author of the book *El Gran Hermano* [*Big Brother*], and has been sued in civil court by President Correa, who requested compensation of \$10 million from the two journalists who wrote the book.²³⁶ Days after the search, a supervisory criminal court in Guayas ordered that the magazine's representatives be allowed to copy the hard drives of the computers in order to recover journalistic material; nevertheless, on December 24, the court-appointed bailees in possession of the equipment reportedly refused to comply with the judge's order, alleging that they had not been notified.²³⁷

152. On March 24, inhabitants of the El Topo indigenous community prevented a group of journalists from covering a public assembly, and assaulted the journalists. According to the information received, journalists David Torres, of Gama TV; Washington Benalcázar, correspondent from the newspaper *El Comercio* in Imbabura; Christian Tinajero, of *Ecuavisa* and Enrique Portilla of *RTS* went to the community to report on the arrest and punishment of an alleged criminal. The

²³⁴ Committee to Protect Journalists (CPJ). December 7, 2010. *Reportero deportivo ecuatoriano golpeado y amenazado*. Available at: <http://cpj.org/es/americas/ecuador/>; Fundamedios/IFEX. December 7, 2010. *Periodista secuestrado, amenazado de muerte*. Available at: http://www.ifex.org/ecuador/2010/12/07/campana_death_threats/es/

²³⁵ El Diario. May 7, 2011. *Balean medios Ediasa en Manta*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/190854-balean-oficina-de-ediasa-en-manta/>; Andean Group for Freedom of Information (EL GALI). June 3, 2011. *Disparan contra oficinas de grupo periodístico*. Available at: <http://www.elgali.org/monitoreo/ecuador/disparan-contra-oficinas-grupo-periodistico?page=7>

²³⁶ International Freedom of Expression Exchange (IFEX) December 21, 2010. *Materiales periodísticos embargados en aparato operativo policial*. Available at: http://www.ifex.org/ecuador/2010/12/21/vanguardia_desalojo/es/; Inter-American Press Association (IAPA). December 20, 2010. *Condena la SIP atropello desproporcionado contra revista ecuatoriana*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4493. Hoy. December 21, 2010. *Vanguardia presenta pedido de protección*. Available at: <http://www.hoy.com.ec/noticias-ecuador/vanguardia-pide-revocatoria-del-operativo-de-desalojo-448675.html>; Knight Center for Journalism in the Americas. December 21, 2010. *Fiscalía Investigará Embargo a Revista Opositora en Ecuador*. Available at: <http://knightcenter.utexas.edu/es/blog/fiscalia-investigara-embargo-revista-opositora-en-ecuador>; El Ciudadano. January 10, 2011. *Fideicomiso: Si Vanguardia paga, se resuelve el problema coactivo*. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=20194:fideicomiso-si-vanguardia-paga-se-resuelve-el-problema-&catid=1:archivo&Itemid=34

²³⁷ International Freedom of Expression Exchange (IFEX). December 30, 2010. *Se impide que revista recupere materiales periodísticos de discos duros embargados*. Available at: http://www.ifex.org/ecuador/2010/12/30/magazine_personnel_blocked/es/

reporters were allowed to listen to part of the assembly, and then were asked to leave. When they withdrew, a group of residents reportedly followed them and attacked them with rocks and nettle branches.²³⁸

153. On May 10, 2011, after testifying at a hearing in a case against former Police Hospital director César Carrión about events that took place on September 30, 2010, journalist Holger Guerrero was verbally attacked by journalists and Carrión sympathizers.²³⁹

154. The Office of the Special Rapporteur was informed that in July 2011, journalist Emilio Palacio reportedly shouted “I do not give declarations to fascists” at a reporter from the official state channel *Ecuador TV* and asked him to leave the place where he was making his statements. The journalist from *Ecuador TV* indicated that Mr. Palacio reportedly had lowered the microphone when he realized that he was from that media outlet.²⁴⁰

155. According to the information received, on September 20, 2011, there was a confrontation between public servants and followers of the President, on one hand, and the directors of the newspaper *El Universo* and their followers, on the other hand. The run-in reportedly occurred because the latter were not permitted to enter the room where a hearing was going to be held in the case President Correa had brought against that newspaper, and the directors reportedly verbally assaulted a member of the presidential staff who blocked their way.²⁴¹

156. The Office of the Special Rapporteur reiterates the importance of creating a climate of respect and tolerance toward all ideas and opinions, and recalls that principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

B. Legal proceedings and arrests

157. The Office of the Special Rapporteur is concerned about the consistent tendency of high-ranking public officials to rebuke, arrest, and prosecute citizens who criticize them at public events. On February 25, Marcos Luis Sovenis shouted “fascist” when President Rafael Correa was traveling through the town of Babahoyo. According to Sovenis, at least seven officers who were

²³⁸ International Freedom of Expression Exchange (IFEX). March 31, 2011. *Periodistas son agredidos e impedidos de realizar cobertura por comuneros indígenas*. Available at: http://www.ifex.org/ecuador/2011/03/31/el_topo/es/; Ecuador en Vivo. March 25, 2011. *Indígenas agreden a palos, piedras y ortiga a periodistas*. Available at: <http://www.ecuadorenvivo.com/2011032569306/sociedad/indigenas-agreden-con-palos-piedras-y-ortiga-a-periodistas.html>

²³⁹ Fundamedios. October 2011. *El 30 de septiembre, un antes y un después en las agresiones contra la prensa*. Available in the archives of the Office of the Special Rapporteur and at: http://www.ifex.org/ecuador/2011/10/03/ecuador_fundamedios_informe.pdf

²⁴⁰ Statement of Emilio Palacio. July 21, 2011. Available at: [http://www.youtube.com/watch?v=uR_O9xDsd5A](http://www.youtube.com/watch?v=uR_O9xDsd5A;); Office of the President of the Republic of Ecuador. September 24, 2011. *Enlace Ciudadano 239*. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=1006 and at: <http://www.youtube.com/watch?v=hbS1b4clkLo>; Presidential Speech of November 1, 2011. *Lo que olvidó decir Fundamedios en la CIDH*. You Tube. Available at: <http://www.youtube.com/watch?v=vAi3L3DVBQs&feature=related>

²⁴¹ Office of the President of the Republic of Ecuador. September 24, 2011. *Enlace Ciudadano 239*. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=1006 and at: <http://www.youtube.com/watch?v=hbS1b4clkLo>; Presidential Speech of November 1, 2011. *Lo que olvidó decir Fundamedios en la CIDH*. You Tube. Available at: <http://www.youtube.com/watch?v=vAi3L3DVBQs&feature=related>

accompanying the president forced him into a vehicle, where they threatened and assaulted him. Sovenis filed a complaint before the Office of the Public Prosecutor on March 2 denouncing the actions of members of the presidential escort,²⁴² and President Rafael Correa announced that he would file a criminal complaint against Sovenis alleging *desacato* [insult].²⁴³

158. On April 12, an individual named German Ponce was arrested in the town of Salcedo for having allegedly insulted the President as the presidential motorcade passed by. He was arrested for this act, and the Flagrant Offenses Prosecutor of Cotopaxi requested 30 days of pretrial detention, which the judge granted based on Article 230 of the Criminal Code,²⁴⁴ offenses against the government, under the chapter on rebellion and attacks on public servants. Ponce was released after 72 hours in custody, after making a public apology. Even so, according to the information received, the case against him is going forward.²⁴⁵

159. The Office of the Special Rapporteur also learned that on April 13, days prior to the referendum called by the government, President Rafael Correa reportedly ordered the arrest of Irma Parra, who allegedly made an obscene gesture at the leader in Riobamba. Parra insisted before the media that she only made a “NO” sign with her hand to express her opposition to the referendum. After several hours in custody, she apologized to the president and was released.²⁴⁶ President Correa justified Parra’s arrest based on the need to respect the integrity of the president.²⁴⁷

160. The Office of the Special Rapporteur received information concerning the arrest of indigenous leader José Aacho, former director of the community radio station *La Voz de Arutam*,

²⁴² Instituto de Prensa y Sociedad (IPYS). March 7, 2011. *Ciudadano agredido por escolta presidencial*. Available at: <http://www.ipys.org/index.php?q=alerta/360>; Article 19. November 19, 2011. *Ecuador: Article 19’s Submission to the UN Universal Periodic Review*. Available at: <http://www.article19.org/resources.php/resource/2859/en/ecuador:-article-19%E2%80%99s-submission-to-the-un-universal-periodic-review>

²⁴³ With respect to this matter, President Rafael Correa reportedly stated: “(...) I assure you that there are people behind this because of the electoral campaign. (...) The appropriate legal action will also be taken, because to insult the President, to call him a fascist, etcetera, is criminal, it is a criminal offense, it’s called *desacato*. Whether we like it or not, it is defined as an offense in the Criminal Code, and it gives rise to pain and suffering; it affects my honor (...)” Ecuador Times. March 4, 2011. *Correa demandará a Sovenis por el incidente “fascista”*. Available at: <http://www.ecuadortimes.net/es/2011/03/04/correa-interpondra-demanda-contra-sovenis/>; Ciudadanía Informada. March 4, 2011. *Correa anuncia acciones legales contra quienes le bloquearon el paso en Esmeraldas*. Available at: http://www.ciudadaniainformada.com/noticias-politica-ecuador0/noticias-politica-ecuador/ir_a/ciudadania-informada/article/correa-anuncia-acciones-legales-contra-quienes-le-bloquearon-el-paso-en-esmeraldas.html

²⁴⁴ “Art. 230.- Anyone who with threats, meanaces, or defamation should offend the President of the Republic or another person exercising Executive functions, shall be punished with a term of imprisonment ranging from six months to two years, and a fine ranging from sixteen to seventy-seven United States dollars” (El que con amenazas, amagos o injurias, ofendiere al Presidente de la República o al que ejerza la Función Ejecutiva, será reprimido con seis meses a dos años de prisión y multa de dieciséis a setenta y siete dólares de los Estados Unidos de Norte América”). Available at: http://www.oas.org/juridico/MLA/sp/ecu/sp_ecu-int-text-cp.pdf

²⁴⁵ Andean Group for Freedom of Information (EL GALI). June 2, 2011. *Dos ciudadanos son detenidos por supuestamente insultar y hacer señales obscenas*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-ciudadanos-son-detenidos-supuestamente-insultar-y-hacer-senales-obscenas>; Hoy. April 14, 2011. *Presos dos acusados de ofender a Correa*. Available at: <http://www.hoy.com.ec/noticias-ecuador/presos-dos-acusados-de-ofender-a-correa-469700.html>

²⁴⁶ Office of the President of the Republic of Ecuador. April 16, 2011. *Enlace Ciudadano No 217*, Milagro – Guayas (minutes 1:37:00 and 2:26:00). Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=startdown&id=811; Andean Group for Freedom of Information (EL GALI). June 2, 2011. *Dos ciudadanos son detenidos por supuestamente insultar y hacer señales obscenas*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-ciudadanos-son-detenidos-supuestamente-insultar-y-hacer-senales-obscenas>

²⁴⁷ El Ciudadano. April 14, 2011. *Presidente pide respetar su integridad*. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=23393:presidente-rafael-correa-reitero-que-irma-parra-le-ofendio-audio&catid=40:actualidad&Itemid=63

on February 1. He was accused of violating the terms of his conditional release in a case in which he was accused of sabotage and terrorism because of messages he reportedly broadcast on that station during a day of indigenous protests, on September 30, 2009. According to reports, on February 8, the Provincial Court of Pichincha granted a writ of *habeas corpus* in Acacho's favor and ordered his release.²⁴⁸

161. Official Letter No. 05303 from the Office of the Attorney General contains the Ecuadorean State's response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR's headquarters in Washington, D.C. on October 25, 2011. In that letter, the Ecuadorean State addressed the concern raised at the hearing with respect to the use of the offense of sabotage and terrorism as a vaguely defined criminal offense that could infringe upon the freedom of expression of individuals who engage in social protest. The State indicated that those offenses are enshrined in Articles 156-166 of the Criminal Code and that "they do not aim to limit the right to freedom of expression, impose prior censorship, curtail social protest, or impose any other unlawful limitation of rights." To the contrary, according to the State, they "pursue the preservation of the general welfare and other rights inherent to the individual" and do not constitute a vague criminal statute.²⁴⁹

162. The Office of the Special Rapporteur observes with concern the increased use of criminal *desacato* and insult laws and civil provisions that could lead to the imposition of disproportionate penalties against persons who publicly express criticism of the highest ranking public dignitaries in Ecuador.

163. On April 27, journalist Wálter Vite Benítez was arrested in Esmeraldas when a judgment became final that sentenced him to a year in prison and a \$500 fine for the offense of criminal defamation against the mayor of that town, who had filed a complaint against him in 2008. According to information provided to the Office of the Special Rapporteur, the mayor was apparently offended by critical remarks made by Vite on an opinion program on *Radio Iris*. The journalist alleges that he never specifically mentioned the mayor of Esmeraldas.²⁵⁰ The journalist went on a hunger strike from the time of his arrest, and was later transported to the Delfina Torres de Concha Hospital, where he remained at the time of his release on May 18, 2011. His release was ordered when a motion to set aside the warrant for his arrest and incarceration was admitted based on the expiration of the criminal statute of limitations, according to which the judgment

²⁴⁸ In December 2009, the National Telecommunications Council cancelled the license of the radio station *La Voz de Arutam*, alleging that the station had taken part in inciting an indigenous uprising against the Water Act, which left one person dead. However, that decision was corrected once it was demonstrated that the audio had not been properly translated into the Ashuar language. Oclacc.org. Radio Evangelización. January 27, 2010. *Conatel decide no clausurar Radio Arutam; SIGNIS Ecuador aplaude medida*. Available at: <http://oclacc.org/noticia/conatel-decide-no-clausurar-radio-arutam-signis-ecuador-aplaude-medida>; Second Chamber for Labor and Juvenile Matters. Case No. 2011-0084. Habeas Corpus. Available at: <http://www.funcionjudicial-pichincha.gov.ec/pichincha/index.php/consulta-de-procesos>; International Freedom of Expression Exchange (IFEX). February 11, 2011. *Ex director de radio acusado de terrorismo y sabotaje recupera su libertad*. Available at: http://www.ifex.org/ecuador/2011/02/11/acacho_released/es/; Official News Agency of Ecuador and Latin America (ANDES). February 8, 2011. *Corte Provincial de Pichincha concedió hábeas a favor de indígenas Shuar*. Available at: <http://andes.info.ec/actualidad/corte-provincial-de-pichincha-concedio-haveas-corpus-a-favor-de-indigenas-amazonicos-avance-49481.html>

²⁴⁹ Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. P. 11. Available in the Archives of the Office of the Special Rapporteur.

²⁵⁰ Committee to Protect Journalists (CPJ). May 2, 2011. *Reportero ecuatoriano preso por difamación*. Available at: <http://cpj.org/es/2011/05/reportero-ecuadoriano-presos-por-difamacion.php>; International Freedom of Expression Exchange (IFEX). May 4, 2011. *Periodista de radio condenado a un año de prisión por injurias calumniosas*. Available at: http://www.ifex.org/ecuador/2011/05/04/vite_jailed/es/

should have been handed down prior to November 18, 2010. The plaintiff appealed this decision, and the appeal was admitted.²⁵¹

164. According to information received, on March 21 the President of the Republic filed a criminal complaint before the 15th Criminal Court of Guayas alleging the criminal defamation offense of “serious calumnious and non-calumnious defamation” [*injuria calumniosa y no calumniosa grave*] against the corporation *El Universo* (the publisher of the newspaper) and its board members Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga and César Enrique Pérez Barriga, as well as against Emilio Palacio, the editor of *El Universo*’s opinion section. The President asked the trial court judge to sentence the four defendants to three years in prison with an indemnization of \$50 million, as well as an additional \$30 million indemnization to be paid by the newspaper’s parent company.²⁵² The case stemmed from a column of Palacio’s, published on February 6, 2011, entitled *No a las mentiras* [“No to Lies”].²⁵³ In the course of the proceedings the Fifteenth Court of Criminal Guarantees of Guayas commissioned to be surrendered as evidence more than 27 reports and expert opinions. The information requested included: payroll lists and reports on the payments to each of the defendants in all of the places they have worked; a list of assets of the company and of each of the individual defendants; income tax returns; details on the shareholdings and partners in the company; reports on payments, benefits and the financial position of the company; purchases and investments abroad; and detailed information on the foreign travel of each of the defendants over the past five years.²⁵⁴ The defendants, for their part, complained of irregularities in the proceedings.²⁵⁵

165. On July 7, 2011, newspaper columnist and opinion editor Emilio Palacio of *El Universo* reportedly submitted his irrevocable resignation in order to “prevent the company from going bankrupt.” He made his decision public in an open letter on July 11, 2011, in which he again assumed all responsibility for the publication of the article that had given rise to the lawsuit.²⁵⁶

²⁵¹ Third Court of Criminal Guarantees of Esmeralda. Case No. 08253-2008-0150. November 11, 2008. Serious calumnious and non-calumnious defamation. Available at: <http://www.funcionjudicial-esmeraldas.gob.ec/index.php/nombre>; International Freedom of Expression Exchange (IFEX). May 25, 2011. *Periodista preso por injurias recupera libertad*. Available at: http://www.ifex.org/ecuador/2011/05/25/vite_released/es/

²⁵² Fifteenth Court of Criminal Guarantees of Guayas. Case No. 09265-2011-0457. March 21, 2011. Serious calumnious and non-calumnious defamation. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63; Committee to Protect Journalists (CPJ). March 31, 2011. *Presidente de Ecuador demanda a diario crítico por difamación*. Available at: <http://www.cpj.org/es/2011/03/presidente-de-ecuador-demanda-a-diario-critico-por.php>; Reporters Without Borders. April 1, 2011. *Reporteros Sin Fronteras pide al presidente Rafael Correa retirar dos demandas exorbitantes contra la prensa*. Available at: <http://es.rsf.org/ecuador-reporteros-sin-fronteras-pide-al-01-04-2011,39939.html>

²⁵³ Emilio Palacio’s opinion column suggested to President Correa, whom he called “The Dictator,” that in order to exonerate those who had taken part in the armed uprising of September 30, 2010, it would be more appropriate to decree an amnesty rather than a pardon, since, he alleged, the president made so many mistakes and the evidence of an attempted *coup d’état* was so undermined, that it would be better to declare a “legal amnesia” than a unilateral pardon. President Correa expressed particular annoyance at Palacio’s suggestion that a pardon would enable another president in the future to prosecute him for having committed a crime against humanity by ordering an armed attack on the hospital where he had been held—a reference that the president characterized as defamatory, false, and an affront to his honor. *El Universo*. February 6, 2011. *NO a las mentiras*. Available at: <http://www.eluniverso.com/2011/02/06/1/1363/mentiras.html>

²⁵⁴ Fifteenth Court of Criminal Guarantees of Guayas. Case No. 09265-2011-0457. March 21, 2011. Serious calumnious and non-calumnious defamation. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63

²⁵⁵ Andean Group for Freedom of Information (EL GALI). July 6, 2011. *Defensa de Diario el Universo denuncia irregularidades en juicio por \$80 millones que les sigue el Presidente de la República*. Available at: <http://www.elgali.org/monitoreo/ecuador/defensa-diario-el-universo-denuncia-irregularidades-juicio-80-millones-que-les-sig>

²⁵⁶ Andean Group for Freedom of Information (EL GALI). July 13, 2011. *Articulista renuncia para evitar que demanda de presidente por \$80 millones quiebre al medio*. Available at: <http://www.elgali.org/monitoreo/ecuador/articulista-renuncia-evitar-que-demanda-presidente-80-millones-quiebre-al-medio>; *El Universo*. July 11, 2011. *Emilio Palacio renuncia a*

According to the information received, the president made clear that the case would continue in spite of the journalist's resignation.²⁵⁷

166. The information received by the Office of the Special Rapporteur indicates that, in view of the defamation suit brought by the president against *El Universo*, the paper's employees announced a peaceful sit-in in the city of Guayaquil to express their support for the company. In addition, in his *Enlace Ciudadano* program No. 229 of July 16, 2011, President Correa reportedly called his sympathizers to a demonstration in support of his criminal complaint.²⁵⁸ Thus, the Office of the Special Rapporteur was informed that on the scheduled hearing date, the demonstrators convened by the president appeared.²⁵⁹

167. On July 20, 2011 the judgment of first instance²⁶⁰ was handed down by an interim judge in Ecuador against *El Universo*, three members of its Board of Directors, and journalist Emilio Palacio. The judgment sentenced the board members and the journalist to three years in prison for the offense of "calumnious defamation" [*injurias calumniosas*] of an authority, and ordered them to pay a total of US \$40 million in compensation to President Rafael Correa. This was broken down as US \$30 million to be paid jointly by the convicted individuals, and US \$10 million by the newspaper's parent company. The defendants were additionally ordered to pay US \$2 million in attorneys' fees to the president's attorneys. The conviction was based on Articles 489, 491, and 493 of the Ecuadorean Criminal Code.²⁶¹ Notice was subsequently given on September 23, 2011 of

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editoría de Opinión y a su columna en este Diario. Available at: <http://www.eluniverso.com/2011/07/11/1/1355/emilio-palacio-renuncia-editoria-opinion-columna-diario.html?p=1354&m=638>

²⁵⁷ El Ciudadano. July 10, 2011. *Emilio Palacio renuncia a Universo.* Available at: http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=25996:emilio-palacio-renuncia-a-diario-el-universo&catid=40:actualidad&Itemid=63; Office of the President of the Republic of Ecuador. July 9, 2011. *Enlace Ciudadano No. 228, Caluma – Bolívar* (minute 0:50:30). Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=937

²⁵⁸ Office of the President of the Republic of Ecuador. *Enlace Ciudadano No. 229.* July 16, 2011. (minute 0:52:19). Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=938; El Comercio. July 20, 2011. *Simpatizantes de Correa copan edificio de la Judicatura en Guayaquil.* Available at: http://www.elcomercio.com/politica/simpatizantes-Rafael-Correa-manifestaciones-Guayaquil-El-Universo_0_520148052.html

²⁵⁹ Andean Group for Freedom of Information (EL GALI). August 1, 2011. *El Universo acepta rectificar, pero abogados de Presidente se niegan a cualquier conciliación en juzgamiento contra el medio.* Available at: <http://www.elgali.org/monitoreo/ecuador/el-universo-acepta-rectificar-pero-abogados-del-presidente-se-niegan-cualquier-con>

²⁶⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 21, 2011. Press Release R72/11. *Office of the Special Rapporteur Expresses Profound Concern Regarding Conviction of Journalist, Directors and Media Outlet in Ecuador.* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=857&IID=2>; Fifteenth Court of Criminal Guarantees of Guayas. Case No. 09265-2011-0457. March 21, 2011. Serious calumnious and non-calumnious defamation. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63; National Secretariat of Communication. Judgment in the case of El Universo. Official Document. July 20, 2011. Available at: http://www.secom.gov.ec/audios/sentencia_casouniverso.pdf

²⁶¹ Art. 489.- Defamation shall be considered calumnious when it falsely accuses an individual of a crime, and non-calumnious when it is expressed to discredit, dishonor or scorn another person, or is part of other actions seeking the same object. ("La injuria es: Calumniosa, cuando consiste en falsa imputación de un delito; y No calumniosa, cuando consiste en toda otra expresión proferida en descrédito, deshonor o menosprecio de otra persona, o en cualquier acción ejecutada con el mismo objeto".)

Art. 491.- Any person convicted of calumnious defamation shall be punished by a term of imprisonment ranging from six months to two years and fines ranging from from six to twenty-five United States dollars when such accusations are made in public places or meetings; in the presence of 10 or more individuals; in writing, printed or not printed, or through images or emblems affixed, distributed or sold, offered for sale, or displayed in public view; or through unpublished writings addressed or communicated to other parties, including letters ("El reo de injuria calumniosa sera reprimido con prisión de seis meses y multa de seis a veinte y cinco dólares de los Estados Unidos de Norte América, cuando las imputaciones hubieren sido hechas: En reuniones o lugares públicos; En presencia de diez o más individuos; Por medio de escritos, impresos o no,

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the appeal judgment handed down by the Second Chamber for Criminal and Traffic Matters of the Provincial Court of Guayas, which affirms in its entirety the criminal conviction and civil judgment against journalist Emilio Palacio, three members of the Board of Directors of *El Universo de Ecuador*, and the newspaper itself.²⁶²

168. The information received indicates that both the lower court's judgment and the appeal judgment convict the three members of *El Universo's* Board of Directors in their capacity as "accomplices."²⁶³ In particular, the judgment of the 15th Court of Criminal Guarantees held that "matters concerning so-called press offenses [...] involve not only the person who writes the defamatory article but also [...] the owner or directors of the medium become accomplices or necessary cooperators in the offense, because without their assistance the publication of the defamatory article would not have been possible."²⁶⁴

169. The Office of the Special Rapporteur was informed that on September 26, 2011 the Second Criminal Chamber of the Provincial Court of Guayas responded to a request from President Correa to clarify and expand upon the judgment. The request asked the court, among other things, to clarify the declaration of abandonment of the motions to vacate and appeal by some of the interested parties, who were neither present nor represented at the hearing on the motion. The Provincial Court of Guayas ruled that journalist Emilio Palacio Urrutia's motion to vacate and appeal

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imágenes o emblemas fijados, distribuidos o vendidos, puestos en venta, o expuestos a las miradas del público; o, Por medio de escritos no publicados, pero dirigidos o comunicados a otras personas, contándose entre éstos las cartas").

Art. 493.- Any person who makes accusations against an authority that constitutes calumnious defamation shall be punished by a term of imprisonment ranging from one to three years. If accusations directed at the authorities are not considered calumnious defamtion but nonetheless serious, the penalty shall be a term of imprisonment ranging from six months to two years and and fines ranging from from six to nineteen United States dollars ("Serán reprimidos con uno a tres años de prisión y multa de seis a veinte y cinco dólares de los Estados Unidos de Norte América, los que hubieren dirigido a la autoridad imputaciones que constituyan injuria calumniosa. Si las imputaciones hechas a la autoridad constituyeren injurias no calumniosas, pero graves, las penas serán de prisión de seis meses a dos años y multa de seis a diecinueve dólares de los Estados Unidos de Norte América").

²⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. September 21, 2011. Press Release R104/11. *Special Rapporteur Expresses Concern Regarding Confirmation of Conviction against Journalist, Directors and Media Outlet in Ecuador* Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=870&IID=2>; Provincial Court of Justice of Guayas. Second Criminal Chamber. Notice of Decision. Case No. 0525-2011. September 26, 2011. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63; Copies of the documents available in the archives of the Office of the Special Rapporteur.

²⁶³ Article 42 of the Criminal Code of Ecuador provides: "Perpetrators shall be understood as: persons who have committed the offense, directly or indirectly, by advising or instigating another to commit it, when their advice has determined the perpetration of the offense; persons who have hindered or sought to hinder the prevention of its execution; persons who have determined the perpetration of the offense and carried it out by using other persons, regardless of whether such persons are liable to be accused, by means of a price, gift, promise, order or any other fraudulent and direct means; persons who have aided in carrying out the offense, in a significant manner, deliberately and intentionally undertaking some act without which the commission of the crime would not have been possible; and those persons who, through physical violence, abuse of authority, threat, or other coercive means, force another to commit the punishable act, even if the force applied for that purpose cannot be characterized as irresistible." ("Se reputan autores los que han perpetrado la infracción, sea de una manera directa e inmediata, sea aconsejando o instigando a otro para que la cometa, cuando el consejo ha determinado la perpetración del delito; los que han impedido o procurado impedir que se evite su ejecución; los que han determinado la perpetración del delito y efectuándolo valiéndose de otras personas, imputables o no imputables, mediante precio, dádiva, promesa, orden o cualquier otro medio fraudulento y directo; los que han coadyuvado a la ejecución, de un modo principal, practicando deliberada e intencionalmente algún acto sin el que no habría podido perpetrarse la infracción; y los que, por violencia física, abuso de autoridad, amenaza u otro medio coercitivo, obligan a otro a cometer el acto punible, aunque no pueda calificarse como irresistible la fuerza empleada con dicho fin"). Available at: http://www.oas.org/juridico/MLA/sp/ecu/sp_ecu-int-text-cp.pdf

²⁶⁴ Fifteenth Court of Criminal Guarantees of Guayas. Case No. 0457-2011. Judgment of July 20, 2011. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63

had been abandoned, and ordered the lower court judge to enforce the judgment against him.²⁶⁵ When this report went to press, the case was awaiting a decision on cassation.

170. According to the information received by the Office of the Special Rapporteur, on February 28, 2011 President Rafael Correa filed suit for non-pecuniary damages in the Fifth Civil Court of Pichincha against investigative journalists Juan Carlos Calderón and Christian Zurita for the 2010 publication of the book *El Gran Hermano [Big Brother]*.²⁶⁶ In the book, the journalists make reference to contracts awarded by the state to companies tied to Fabricio Correa, the president's brother. The president claims that he never had knowledge of the contracts, and that as soon as he found out about them he terminated them unilaterally. The president alleges in his lawsuit that the book contains "false facts" that tarnish his good name, and he seeks damages in the amount of US \$10 million from the book's authors. At the time of this writing, the case was still pending.²⁶⁷

171. In 2008, journalist Freddy Aponte was convicted of criminal defamation for having called the mayor of Loja a "thief." Aponte served a six-month prison sentence, but stated that he did not have the US \$55,000 he was supposed to pay as compensation. In August of 2011 he was convicted by a trial court and sentenced to five years in prison for the offense of "fraudulent insolvency." At the time of this writing, the case was on appeal. The journalist has reiterated that he does not have the funds to pay the compensation. This is one of several cases that the mayor of Loja has brought against Aponte in recent years.²⁶⁸

172. The Office of the Special Rapporteur learned of a criminal case alleging defamation offenses [*injurias calumniosas y no calumniosas graves*] brought by prosecutor Gloria Alexandra Bravo Cedeño against journalists and media executives Pedro Eduardo Zambrano Lapentti, José Childerico Cevallos Caicedo, Paúl Julio Jefferson Bernal, Freddy Antonio Solórzano Catagua, Evelina Amarilis Zambrano Vera, and attorney Edison Nevi Cevallos Moreira.²⁶⁹ The media outlets allege that the defendants limited themselves to repeating the complaint or opinion of a private citizen, and that

²⁶⁵ Provincial Court of Justice of Guayas. Second Criminal Chamber. Notice of Decision. Case No. 0525-2011. September 26, 2011. Available at: http://www.funcionjudicial-guayas.gob.ec/portal/index.php?option=com_wrapper&view=wrapper&Itemid=63. Copies of the documents are available in the archives of the Office of the Special Rapporteur.

²⁶⁶ Fifth Civil Court. Fifth Court of the Province of Pichincha, File No. 2011-0265. Available for consultation at: <http://www.funcionjudicial-pichincha.gob.ec/pichincha/index.php/consulta-de-procesos>

²⁶⁷ The book *El Gran Hermano* ["Big Brother"] is a journalistic investigation that documents the awarding of million-dollar State contracts to companies linked to Rafael Correa's brother, Fabricio Correa. Hoy. March 17, 2011. *Correa demanda a los periodistas Juan Carlos Calderón y Christian Zurita*. Available at: <http://www.hoy.com.ec/noticias-ecuador/correa-demanda-a-los-periodistas-juan-carlos-calderon-y-christian-zurita-464630.html>; *America Economía*. March 22, 2011. *Rafael Correa demanda por US\$10 millones a dos periodistas ecuatorianos*. Available at: <http://www.americaeconomia.com/politica-sociedad/politica/rafael-correa-demanda-por-us10-millones-dos-periodistas-ecuatorianos>; Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión*. Available at: <http://www.cpj.org/es/CPJ.es.ecuador.9.1.11.pdf>

²⁶⁸ IACHR. 2008 Annual Report. OEA/SER.L/V/II. 134 Doc.5. February 25, 2009. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 104. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=742&IID=2>; *El Diario EC*. May 2, 2009. *Dos periodistas fueron encarcelados por denunciar casos de corrupción*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/117213-dos-periodistas-fueron-encarcelados-por-denunciar-casos-de-corrupcion/>; Provincial Court of Justice of Loja. Criminal Chamber. Case No. 2010-0641. August 26, 2010. Available at: <http://www.funcionjudicial-loja.gob.ec/loja/index.php/consultacausas>; Second Court of Criminal Guarantees of the Superior Court of Justice of Pichincha. Case No. 2011-0010. August 9, 2011. Available at: <http://www.funcionjudicial-loja.gob.ec/loja/index.php/consultacausas>; Third Court of Criminal Guarantees of Loja. Case No. 2008-0156. February 17, 2011. Available at: <http://www.funcionjudicial-loja.gob.ec/loja/index.php/consultacausas>

²⁶⁹ Eleventh Criminal Court of Manabí. Case No. 13261-2011-0065. Criminal Complaint No. 049-2011. Serious calumnious and non-calumnious defamation. April 29, 2011. Available at: <http://www.funcionjudicial-manabi.gov.ec/index.php/consulta-de-causas>

she is the party against whom the accusation should be made.²⁷⁰ On May 14, a group of alleged pro-government sympathizers had verbally assaulted Jaime Ugalde, editor of the media group *Ediasa*, while he was traveling around the town of Portoviejo. According to reports, individuals with banners for the pro-government movement *Alianza País* insulted Ugalde from a pickup truck, while another vehicle blocked his way for several minutes. Moments earlier the president's Saturday radio program, *Enlace Ciudadano* had been held in the neighboring town of Manta, in which the president expressed his support for Prosecutor Bravo Cedeño's lawsuit against the journalists and executives of *Ediasa*.²⁷¹

173. According to the information received by the Office of the Special Rapporteur, on November 24 the 14th Court of Criminal Guarantees of Pichincha convicted Mónica Chuji, an indigenous leader and former Secretary of Communications, of the offense of criminal defamation. She was sentenced to one year in prison and ordered to pay a fine of a US \$100,000. The case was based on statements given to the media in which she criticized a public servant, and reportedly stemmed from an interview published in an Ecuadorean newspaper on February 6, 2011, in which Chuji said that Vinicio Alvarado, the Minister of Public Administration, was a "*nouveau riche*" who had gotten rich during his time in government.²⁷² The Office of the Special Rapporteur was informed that, after the judgment was handed down, Minister Alvarado reportedly announced that he had decided to "forgive" Chuji through the concept of a "pardon."²⁷³ Nevertheless, the indigenous leader reportedly indicated that she would appeal the decision. The Office of the Special Rapporteur was informed that on December 7, 2011, the 14th Court of Guarantees dismissed the case at the request of the plaintiff, rendering moot the sentence and Chuji's grounds for appeal.²⁷⁴

174. President Correa reportedly requested to lift the legislative immunity of opposition Assemblyman Galo Lara, for purposes of bringing a case against him for criminal defamation. The president's request allegedly stemmed from a statement broadcast on channel RTU during the 119th legislative session, in which the assemblyman asserted, "There is no agreement for democracy, only for buying consciences, Mr. President; here there is solid opposition to the regime led by Rafael Correa, who commands and protects the corruption from Carondelet." President Correa accused Lara of having committed the criminal defamation offenses [*injuria calumniosa y no calumniosas*] defined in Articles 489, 490 and 494 of the Criminal Code. Accordingly, he requested—pursuant to Article 128(2) of the constitution—that the National Court of Justice (CNJ) ask the National

²⁷⁰ Actualidad. May 13, 2011. *Una fiscal demanda a Ediasa por injurias*. Available at: <http://www.hoy.com.ec/noticias-ecuador/una-fiscal-demanda-a-ediasa-por-injurias-475001.html>; Andean Group for Freedom of Information (EL GALI). June 3, 2011. *Fiscal pide prisión y \$1.5 millones a directivos y periodistas de grupo de medios en Manabí*. Available at: <http://elgali.org/monitoreo/ecuador/fiscal-pide-prision-y-15-millones-periodistas-y-directivos-grupo-medios-manabi>

²⁷¹ Associated Press News Agency. May 14, 2011. *Correa a favor de demanda a tres medios de comunicación del grupo Ediasa*. Available at: <http://www.terra.com.ec/noticias/noticias/act2847832/correa-favor-demanda-tres-medios-comunicacion-grupo-ediasa.html>; Office of the President of Ecuador. May 14, 2011. *Enlace Ciudadano No. 220*, Manta, Manabí. (minute 0:16:10). Available at: http://www.presidencia.gob.ec/index.php?option=com_repository&Itemid=90&func=fileinfo&id=832; Explored. com.ec. May 17, 2011. *Agresión verbal a editor de El Diario*. Available at: <http://www.explored.com.ec/noticias-ecuador/una-agresion-verbal-a-editor-de-el-diario-475702.html>

²⁷² 14th Court of Criminal Guarantees of Pichincha. Case No. 2011-0350. Judgment of November 24, 2011. Available at: <http://www.funcionjudicial-pichincha.gov.ec/pichincha/index.php/consulta-de-procesos>

²⁷³ El Ciudadano. November 30, 2011. "*Decidimos asumir la valentía de enfrentar a las injurias*". Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=29102:decidimos-asumir-la-valentia-de-enfrentar-las-injurias-&catid=40:actualidad&Itemid=63; El Comercio. November 26, 2011. *Alvarado perdona a Chuji, pero dice que no aceptará más injurias*. Available at: <http://www.elcomercio.com/politica/Alvarado-perdona-Chuji-aceptara-injurias-0-597540425.html>

²⁷⁴ 14th Court of Criminal Guarantees of Pichincha. Case No. 2011-0350. Judgment of December 7, 2011. Available at: <http://www.funcionjudicial-pichincha.gov.ec/pichincha/index.php/consulta-de-procesos>

Assembly for authorization to open a criminal case against the assemblyman. On November 10, the Second Criminal Chamber of the CNJ issued an official letter to Fernando Cordero, President of the National Assembly, requesting to lift Assemblyman Lara's immunity. A response to the request must be provided at a plenary session of the National Assembly by December 10, 2011. In the event that there is no response by that deadline, it will be understood to have been granted under the terms of Article 128 of the constitution.²⁷⁵ At the time this report went to press, the Special Rapporteur was informed that the National Assembly had denied the request to lift Assemblyman Lara's immunity.²⁷⁶

175. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression maintains that "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information." For its part, principle 10 of the same declaration establishes that "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

176. The Inter-American Court has also examined, in specific cases, the disproportionate nature of *desacato* laws and the prosecution of individuals for this offense. For example, in the case of *Palamara Iribarne v. Chile*,²⁷⁷ the Inter-American Court examined the case of a civilian employee of the Chilean Armed Forces who had made critical statements in the media about the operation of the military criminal justice system. As a result, Palamara Iribarne was prosecuted for the offense of *desacato*. In the opinion of the Inter-American Court, in this case "by pressing a charge of

²⁷⁵ Constitution of the Republic of Ecuador. October 2008. Available at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf

Article 128.- Assembly persons shall enjoy parliamentary immunity from legal proceedings by the National Court of Justice during the performance of their duties; they shall not be held civilly or criminally liable either for the opinions they give or for the decisions or actions they carry out in the performance of their duties, inside or outside the National Assembly.

To file criminal proceedings against an Assembly person, prior authorization from the National Assembly shall be required, except in those cases that are not related to the performance of their duties. If the petition filed by the competent judge requesting authorization for trial proceedings is not answered within a term of thirty (30) days, it shall be construed as granted. During the periods of recess, the time-limits indicated above shall be suspended. Assembly persons can only be arrested and imprisoned in case of a felony or final judgment of conviction [...] ("Las asambleístas y los asambleístas gozarán de fuero de Corte Nacional de Justicia durante el ejercicio de sus funciones; no serán civil ni penalmente responsables por las opiniones que emitan, ni por las decisiones o actos que realicen en el ejercicio de sus funciones, dentro y fuera de la Asamblea Nacional. // Para iniciar causa penal en contra de una asambleísta o de un asambleísta se requerirá autorización previa de la Asamblea Nacional, excepto en los casos que no se encuentren relacionados con el ejercicio de sus funciones. Si la solicitud de la jueza o juez competente en la que pide la autorización para el enjuiciamiento no se contesta en el plazo de treinta días, se entenderá concedida. Durante los periodos de receso se suspenderá el decurso del plazo mencionado. Solo se les podrá privar de libertad en caso de delito flagrante o sentencia ejecutoriada").

²⁷⁶ El Ciudadano. December 3, 2011. "*Mientras yo sea Presidente, aplicaremos la Ley y defenderemos el Bien Común*". Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=29176:mientras-yo-sea-presidente-aplicaremos-la-ley-y-defenderemos-el-bien-comun&catid=40:actualidad&Itemid=63. Hoy. December 2, 2011. *Correa pide levantar inmunidad a Lara*. Available at: <http://www.hoy.com.ec/noticias-ecuador/noticias-ecuador/correa-pide-levantar-inmunidad-a-lara-518482.html>; ANDES, Official news agency of Ecuador and South Latin America. December 9, 2011. *70 votos evitaron que el legislador Galo Lara responda penalmente por supuesta injurias*. Available at: <http://andes.info.ec/politica/70-votos-evitaron-que-legislador-galo-lara-responda-penalmente-por-supuestas-injurias-119567.html>

²⁷⁷ I/A Court H.R. *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135.

contempt, criminal prosecution was used in a manner that is disproportionate and unnecessary in a democratic society, which led to the deprivation of Mr. Palamara-Iribarne's right to freedom of thought and expression with regard to the negative opinion he had of matters that had a direct bearing on him and were closely related to the manner in which military justice authorities carried out their public duties during the proceedings instituted against him. The [Inter-American] Court believes that the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism levelled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression."²⁷⁸

177. In the case of *Tristán Donoso v. Panama*, the Inter-American Court underscored the positive fact that, subsequent to Tristán Donoso's conviction of criminal defamation for speaking out against a high-ranking government figure, Panama did away with penalties for *desacato* and other restrictions on freedom of expression.²⁷⁹

178. In addition, in the case of *Herrera Ulloa*, in its examination of the use of criminal law against persons who express critical opinions or circulate information that implicates the highest-ranking public servants, the Inter-American Court held:

*In a democratic society public servants are more exposed to scrutiny and the criticism of the public.*²⁸⁰ *This different threshold of protection is due to the fact that they have voluntarily exposed themselves to a stricter scrutiny. Their activities go beyond the private sphere to enter the realm of public debate.*²⁸¹ *This threshold is not based on the nature of the individual, but on the public interest inherent in the actions he performs.*²⁸²

179. In the same vein, in the case of *Palamara Iribarne*, the Court found that:

*It is logical and appropriate that statements concerning public officials and other individuals who perform public services are afforded, as set forth in Article 13(2) of the Convention, greater protection, thus allowing some latitude for broad debate, which is essential for the functioning of a truly democratic system.*²⁸³

180. In this respect, in a democratic society, public officials and those who aspire to be public officials have a distinct threshold of protection that exposes them to a greater degree of scrutiny and public criticism. This is justified by the public interest nature of the activities they engage in, as they have exposed themselves voluntarily to heightened scrutiny, and because they

²⁷⁸ I/A Court H.R. *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 88.

²⁷⁹ I/A Court H.R. *Case of Tristán-Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 133.

²⁸⁰ See: I/A Court H.R. *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Para. 129; *Case of Ricardo Canese*. Judgment of August 31, 2004. Para. 103.

²⁸¹ See: I/A Court H.R. *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Para. 129; *Case of Ricardo Canese*. Judgment of August 31, 2004. Para. 103.

²⁸² See: I/A Court H.R. *Case of Herrera-Ulloa*. Judgment of July 2, 2004. Para. 129; *Case of Ricardo Canese*. Judgment of August 31, 2004. Para. 103.

²⁸³ I/A Court H.R. *Case of Palamara Iribarne*, Judgment of November 22, 2005. Para. 82.

have an enormous capacity to call information into question through their power to appeal to the public.²⁸⁴

181. Also, the Inter-American Court has indicated that “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”²⁸⁵

182. In Official Letter No. 05303 from the Office of the Attorney General, which contains the State’s response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR’s headquarters in Washington, D.C. on October 25, 2011, the Ecuadorean State addressed the scope of the doctrine and the decisions of the Inter-American Court of Human Rights and the Commission within the framework of the new Constitution of 2008. The State begins by indicating that “The Ecuadorean State considers the doctrine and the case law of the Inter-American System to be a secondary source of public international law.” Nevertheless, it indicates that once a State accepts the jurisdiction of the Court, it is required to enforce the Court’s decisions in its particular cases. In this respect, the State highlighted that the Constitutional Court of Ecuador has applied the inter-American case law in multiple judgments as an “auxiliary sources.” In terms of the force and hierarchical status of international human rights standards, the State indicated that “international human rights law, having the same hierarchical status as the Constitution in benefit of the validity of human rights, is applied as a secondary source of international law. In this context, and because the Ecuadorean State has agreed to be bound by the decisions of the Inter-American Court, the Constitution of the Republic, beginning with its preamble, establishes guidelines that guarantee the rights enshrined in the American Convention and confer constitutional status upon the reports and judgments of the Inter-American Commission and the Inter-American Court of Human Rights, respectively.” The State reported that the Constitution of Ecuador establishes expressly that “International human rights instruments enjoy constitutional status insofar as they best favor the full validity of rights [...] they shall be directly and immediately enforced.” The State concluded that the rights enshrined “in international human rights instruments are enforceable against any public servant,” and that public servants “are responsible for implementing the standards of the Inter-American System for the Protection of Human Rights.”²⁸⁶

183. With respect to criminal law provisions that existed prior to the Constitution, such as criminal defamation [*injuria*], the State indicated that Article 289 of the Criminal Code protects people’s right to honor in general. In addition, it maintains that the type of protection of honor and dignity “provided for in the criminal law is set forth in Chapter Six of the Constitution, which

²⁸⁴ I/A Court H.R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177. Paras. 86-88; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135. Para. 83; *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73. Para. 69; *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74. Paras. 152 & 155; *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 83; *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. Paras. 125-129; *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 87; *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009 Series C No. 193. Para. 115.

²⁸⁵ I/A Court H.R. *Case of Tristán-Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 129.

²⁸⁶ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1. 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 4-7. Available in the Archives of the Office of the Special Rapporteur.

establishes the rights to liberty. Those rights are understood as moral integrity; the right of all persons wronged by information disseminated by the media without evidence or based on inaccurate facts, to the appropriate correction, reply, or response, which shall be immediate, mandatory, and free of charge, in the same space or time slot; and the right to honor and to one's good name. Finally, it establishes that 'the Law shall protect the image and voice of the individual.'" The State additionally considered that the protection of honor is provided for in general bodies of law, under which those provisions could be subject to (i) constitutional challenge, or (ii) repeal or the enactment of a new body of law by the National Assembly pursuant to Article 52 of the Organic Law on the Legislature.²⁸⁷

184. In reference to the issue of protecting the honor of all citizens from the statements of public servants, the Ecuadorean State indicated that Article 489 of the Criminal Code generally protects the right of all persons to their honor, by establishing the offense of criminal defamation [*injurias*]. However, the State indicated that Article 493 of the Criminal Code establishes special protection when the criminal defamation is directed toward public servants. The State further noted that Title III of the Criminal Code, entitled "crimes against public administration," provides special protection reserved for the honor of the authorities, and that the articles that are currently the subject of a constitutional challenge before the Constitutional Court are included in this title.²⁸⁸

185. In this respect, the State underscored that "Two constitutional challenges that were consolidated are currently pending before the Constitutional Court of Ecuador [...] seeking to eliminate Articles 230, 231, 232 and 233 of the Criminal Code, which are part of the crimes against public administration." The State indicated that in this case the Office of the Attorney General, in its capacity as the State's legal representative, maintained that "in spite of the fact that it does not agree with the plaintiffs' arguments, it does not object to the elimination of those offenses, while preserving the general protection of the right to honor through the offense of criminal defamation [*injurias*]." The Ecuadorean State concluded that "The criminal laws that protect the honor of public servants could be eliminated through a declaration of unconstitutionality by the Constitutional Court of Ecuador, keeping only those provisions that guarantee the protection of the honor of all citizens in general."²⁸⁹

C. Presidential broadcasts and government interruptions of news programs

186. According to the information received, mandatory government broadcasts have been ongoing in Ecuador in recent years, in addition to the programs *Enlace Ciudadano* [Citizen Connection] and *Diálogo con el Presidente* [Dialogue with the President].²⁹⁰

²⁸⁷ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 7-8. Available in the Archives of the Office of the Special Rapporteur.

²⁸⁸ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 10-11. Available in the Archives of the Office of the Special Rapporteur.

²⁸⁹ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. p. 9. Available in the Archives of the Office of the Special Rapporteur.

²⁹⁰ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 224. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20abril.pdf>; Presentation of César Ricaurte (Fundamedios) at the hearing on the Situation of the Right to Freedom of Expression in Ecuador, held before the IACHR in Washington D.C. on March 23, 2010. The information presented was not disputed by the State.

187. During 2011, a new way of employing the power to conduct mandatory presidential broadcasts has been pioneered. As mentioned below, the government has made use of this power to order certain media outlets to publish the government's opinion regarding their editorials or news articles. In effect, according to information received, during 2011 there have been repeated governmental interruptions of critical news programs by presidential radio and television broadcasts that transmit the official message only on the station broadcasting the information or opinion that the government objects to. According to the reports received by the Office of the Special Rapporteur, on January 18, 25, and 31, the government interrupted the signal of the *Teleamazonas* channel to insert messages during the morning program "*Los Desayunos 24 Horas*," hosted by journalist María Josefa Coronel. The presidential broadcasts, which only affected *Teleamazonas*, criticized Coronel's responses to the government messages and her opinions and interviews that questioned the referendum and plebiscite advocated by President Rafael Correa, which sought to make legal and constitutional changes.²⁹¹ On February 10, a presidential speech interrupted the interview and opinion program "*En Contacto Directo*" on the *Ecuavisa* network for ten minutes. According to reports, the guest on the program that day was former President Lucio Gutiérrez, and the message from the government criticized the former president's administration.²⁹² On February 15, a presidential broadcast reportedly interrupted the signals of the *Radio Quito* and *Platinum* radio stations of the *Ecuadoradio* network for 15 minutes, in order to call into question Fabio Chambers, who had been interviewed the previous day by journalist Miguel Rivadeneira. Chambers was the auditor in charge of investigating the contracts entered into between the state and the president's brother, Fabricio Correa. The government message criticized the colloquial tone of the interaction between the journalist and the interviewee.²⁹³ The following day, February 16, the government inserted a message that was nearly 10 minutes long into the news and opinion program on *Radio Democracia* hosted by journalist Gonzalo Rosero, for purposes of refuting opposition assemblyman Galo Lara, who had been interviewed on the show the previous day.²⁹⁴ On February 28 and on March 2, the government reportedly dedicated two other presidential broadcasts—which were only on the *Ecuavisa* station—to refuting remarks made by journalist Alfredo Pinoargote, of the news program "*Contacto Directo*," and an interview conducted on February 27 with the mayor of Guayaquil, Jaime Nebot, in which reforms that were to be approved by the referendum were called into question.²⁹⁵ On March 28, the government disputed journalists Juan Carlos Calderón and

²⁹¹ Committee to Protect Journalists (CPJ). February 2, 2011. *Gobierno ecuatoriano interrumpe programas para refutar críticas*. Available at: <http://cpj.org/es/2011/02/gobierno-ecuatoriano-interrumpe-programas-para-ref.php>; La República. February 1, 2011. *Ecuador: Gobierno interrumpe programa para criticar a presentadora*. Available at: <http://www.larepublica.pe/01-02-2011/ecuador-gobierno-interrumpe-programa-para-criticar-presentadora>; Government of the Republic of Ecuador. January 31, 2008. *Respuesta a María Josefa Coronel, de Teleamazonas*. Available at: <http://www.youtube.com/watch?v=JH9o5a6H3og>

²⁹² Andean Group for Freedom of Information (EL GALI). February 10. *Cadena interrumpe por casi 10 minutos programa de entrevistas para descalificar a opositor*. Available at: <http://www.elgali.org/monitoreo/ecuador/cadena-interrumpe-casi-diez-minutos-programa-entrevistas-descalificar-opositor>

²⁹³ El Comercio. February 16, 2011. *La señal de Ecuadoradio fue interrumpida*. Available at: http://www4.elcomercio.com/politica/senal-Ecuadoradio-interrumpida_0_428357163.html; Andean Group for Freedom of Information (EL GALI). February 16, 2011. *Dos cadenas de radio interrumpen noticieros de radio para criticar a periodistas y oposición*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-cadenas-gubernamentales-interrumpen-noticieros-radio-criticar-periodistas-y-op>

²⁹⁴ El Comercio. February 17, 2011. *El gobierno no solo interrumpe los noticieros de TV; sigue con la radio*. Available at: http://www.radiocolosal.com/sitio/index.php?option=com_content&view=article&id=7849%3Ael-gobierno-no-solo-interrumpe-los-noticieros-de-tv-sigue-con-la-radio&catid=37%3Anacionales&Itemid=1; Andean Group for Freedom of Information (EL GALI). February 16, 2011. *Dos cadenas de radio interrumpen noticieros de radio para criticar*. Available at: <http://www.elgali.org/monitoreo/ecuador/dos-cadenas-gubernamentales-interrumpen-noticieros-radio-criticar-periodistas-y-op>

²⁹⁵ Ecuador Inmediato. March 1, 2011. *Alfredo Pinoargote se ratifica en críticas al gobierno y lo responsabiliza de la inseguridad*. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=144774&umt=Alfredo%20Pinoargote%20se%20ratifica%20en%20cr%20EDticas%20al%20Gobierno%20y%20lo%20responsabiliza%20de%20la%20inseguridad

Cristian Zurita, authors of the book *"El Gran Hermano"* ["*Big Brother*"] on a national television network. According to the information received, the official message denied that President Rafael Correa had any knowledge of the contracts that his brother Fabricio had been awarded by the state. The broadcasts stressed that the journalists should retract their assertions.²⁹⁶ That same day, the journalists presented the second edition of their book and dismissed the possibility of any retraction.²⁹⁷ On April 3, the government aired a second official broadcast related to the same issue.²⁹⁸

188. The government had also reportedly warned the *Ecuavisa* network that it was risking sanctions for having displayed the text *"Government Broadcast"* while an official message was being broadcast on February 17. According to the information received, National Communications Secretary Fernando Alvarado sent a note to Fabián Jaramillo, the Superintendent of Telecommunications, in which he indicated that the station had *"arbitrarily"* altered the content of the government message by including that text since, according to Alvarado, licensees of state broadcasting frequencies are required to air the messages in their entirety, without altering, editing, or modifying in any way the audiovisual materials delivered to them. According to reports, the station's executives agreed to rebroadcast the message without any alteration.²⁹⁹

189. According to the information received by the Office of the Special Rapporteur, on June 29, 2011 the program *"La Mañana en 24 Horas"* on the *Teleamazonas* television station was interrupted by a national broadcast link-up directed at that channel only. In it, the program's interviewer, Jeannette Hinostraza, was accused of having a conflict of interest because she interviewed Assemblyman Galo Lara, who had denounced irregularities in the Ministry of Economic and Social Inclusion concerning life insurance and the non-payment of a "human development" bonus to beneficiaries. The 12-minute link-up disparaged the interviewer because her husband's father was the owner of an insurance company, and it attempted to discredit the assemblyman for having been named a defendant in some lawsuits.³⁰⁰

190. At the public hearing held on October 25, 2011 at the IACHR, the government of the Republic of Ecuador indicated that it is respectful of freedom of expression, but not of the right to make false accusations, lie, or offend, which it would respond to under the laws currently in force. The state indicated that during President Correa's administration the number of Internet users

²⁹⁶ Government of the Republic of Ecuador. March 28, 2011. *Los autores del libro El Gran Hermano mienten*. Available at: <http://www.youtube.com/watch?v=MfOZQJ4PPws>; Expreso/Ecuador Inmediato. March 28, 2011. *Fabricio Correa se salvó de ser demandado*. Available at: [http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=146580&umt=EXPRESO%20\(Guayaquil\)%20Fabricio%20Correa%20se%20salv%F3%20de%20ser%20demandado](http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=146580&umt=EXPRESO%20(Guayaquil)%20Fabricio%20Correa%20se%20salv%F3%20de%20ser%20demandado)

²⁹⁷ Entérate Ecuador. March 28, 2011. *Periodistas Calderón y Zurita no se retractan. Presentan la segunda edición del libro El Gran Hermano*. Available at: <http://www.enterateecuador.com/frontEnd/main.php?idSeccion=47598>

²⁹⁸ Fundamedios. April 4, 2011. *Gobierno dedica otra cadena para interrumpir y criticar a su presentadora*. Available at: http://www.facebook.com/note.php?note_id=10150147116452027

²⁹⁹ Enlace Ecuador/El Comercio. *Críticas por investigación a Ecuavisa*. Available at: <http://www.enlaceecuador.com/component/content/article/10798-el-comercio-criticas-por-investigacion-a-ecuavisa.html>; El Comercio.com. May 20, 2011. *Conatel abre expediente contra Ecuavisa por presuntamente no transmitir cadenas*. Available at: http://www.elcomercio.com/politica/Ecuavisa-medios-de-comunicacion-Secretaria-de-Comunicacion-Ecuador-cadenas-presidenciales_0_484151672.html

³⁰⁰ Andean Group for Freedom of Information (EL GALI). June 30, 2011. *Gobierno Interrumpe Programa de Entrevistas y Descalifica a su Entrevistadora*. Available at: <http://www.elgali.org/monitoreo/ecuador/gobierno-interrumpe-programa-entrevistas-y-descalifica-su-entrevistadora>; International Freedom of Expression Exchange (IFEX). August 10, 2011. *Presidente de la república insta a legisladores a que enjuicien a periodista*. Available at: http://www.ifex.org/ecuador/2011/08/10/hinostraza_harassed/es/; Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión*. Available at: <http://www.cpj.org/es/CPJ.es.ecuador.9.1.11.pdf>

has doubled, and an increase in the allocation of frequencies has been verified. It further emphasized that the government's decision to create public media has reportedly become a threat to the large media outlets, which have used every possible resource to combat this state decision. Moreover, the state asserted that in Ecuador prior censorship does not come from the state but rather from the media owners themselves toward their own journalists.³⁰¹

191. For its part, Fundamedios indicated at that hearing that journalists and the media both have been subject to constant disparagement, insults, accusations, and stigmatizing speech from high-ranking government officials, and particularly by the head of state. It stated that most of the attacks come from public servants through their use of stigmatizing speech, as well as administrative, legislative, and judicial decisions.³⁰²

192. After the hearing, the government issued at least two official speeches on radio and television questioning the people who had participated in the hearing, particularly about Cesar Ricaurte, the director of the organization Fundamedios.³⁰³

193. On November 3, 2011, the Inter-American Commission on Human Rights requested information from the State of Ecuador with respect to the aforementioned state's radio and television broadcasting. In particular, the IACHR requested information about alleged offensive, stigmatizing, and threatening messages conveyed through social networks against the representatives of the organization Fundamedios.³⁰⁴

194. The state sent its response to the request for information on November 18, 2011. In that response, the state made some clarifications about the situation of the media in Ecuador, and answered the questions posed by the IACHR. The State indicated that there are significant private media powers in Ecuador that act against the government and manipulate freedom of expression in the country. It stressed that the greatest concentration of media is found in the private sector and that those private media "are aligned with Fundamedios." Additionally, the state considered that "freedom of expression is in a troubled state in the Republic of Ecuador," and therefore limitations should be placed not on public servants, but rather on the "private media that misinform, lie, and restrict freedoms, since they represent important national and international sectors that seek to destabilize democracy in the country."³⁰⁵

195. In response to the IACHR's questions, the state maintained that the purpose of the presidential speech aired on November 1, 2011—which referred to Fundamedios Director César Ricaurte—was to properly inform the Ecuadorean public about events that are not published in the privately-owned media. The state alleged that the private media impose a kind of media censorship that prevents the Government from adequately communicating matters of public interest. It

³⁰¹ IACHR. 143rd Period of Sessions. October 25, 2011. *Public hearing on the Situation of the Right to Freedom of Expression in Ecuador*. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

³⁰² IACHR. 143rd Period of Sessions. October 25, 2011. *Public hearing on the Situation of the Right to Freedom of Expression in Ecuador*. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

³⁰³ Statement of November 1, 2011. *Lo que olvidó decir Fundamedios en la CIDH*. You Tube. Available at: <http://www.youtube.com/watch?v=vAi3L3DVbQs&feature=related>; Hora. December 19, 2011. *Más de 100 minutos en un mes solo para las cadenas*. Available at: <http://www.lahora.com.ec/index.php/noticias/show/1101253770>

³⁰⁴ Inter-American Commission on Human Rights. November 3, 2011. Request for information addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. IACHR archives.

³⁰⁵ Ministry of Foreign Affairs, Trade and Integration of the Republic of Ecuador. November 18, 2011. Note No. 18568-2011-GM. Response to the November 3, 2011 request for information letter from the Office of the Special Rapporteur, addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. Archives of the Office of the Special Rapporteur.

emphasized that broadcasting mandatory presidential speeches is a power granted to the state under Article 59 of the Broadcasting and Television Act to report on the activities of government bodies—in this case, the activities surrounding the visit of several public servants to the October 25, 2011 hearing at the IACHR and the arguments made at the hearing. The state also indicated that the speech was aired in accordance with the requirements of the regulations to the Broadcasting and Television Act, stressing that such broadcasts are not limited in duration when they are requested by the President of the Republic.³⁰⁶

196. With respect to the verification of the information broadcast in the presidential speech and the possibility of recourse for affected parties to dispute the statements made in such broadcasts, the state indicated that the presidential broadcasts are informational forums in which no accusations of any kind are made, and that they contain “completely objective” facts with clearly verifiable sources. As such, in the state’s opinion, it was not appropriate to request “a forum for clarifications within the same compulsory programming system.” Nevertheless, the state indicated that “it has made corrections to its official programming, as requested under the protection of Ecuadorean law, when the information aired has been inaccurate, and it is willing to do so at any time.”³⁰⁷

197. The Office of the Special Rapporteur is grateful to the State of Ecuador and to the civil society organizations for the information they submitted, and once again it acknowledges the importance granted to the October 25 hearing, which was attended by high-ranking officials of the Ecuadorean State.

198. In addition, the Office of the Special Rapporteur has acknowledged the authority of the President of the Republic and other high-ranking government officials to use the media for purposes of informing the public of significant issues of public interest that must be reported urgently through the independent media. Indeed, the Inter-American Court has held that “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”³⁰⁸

199. Nevertheless, the exercise of this authority is not absolute. The information that governments transmit to their citizens through mandatory presidential broadcasts must be strictly necessary in order to address an urgent need for information regarding issues of clear and genuine public interest. They must be aired for the period of time strictly necessary for the conveyance of such information. In this respect, both the IACHR and its Office of the Special Rapporteur,³⁰⁹ as well as some national bodies of States parties to the American Convention, applying international standards, have indicated that “not just any information justifies the interruption by the President of

³⁰⁶ Ministry of Foreign Affairs, Trade and Integration of the Republic of Ecuador. November 18, 2011. Note No. 18568-2011-GM. Response to the November 3, 2011 request for information letter from the Office of the Special Rapporteur, addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. Archives of the Office of the Special Rapporteur.

³⁰⁷ Ministry of Foreign Affairs, Trade and Integration of the Republic of Ecuador. November 18, 2011. Note No. 18568-2011-GM. Response to the November 3, 2011 request for information letter from the Office of the Special Rapporteur, addressed to the Foreign Minister of Ecuador by virtue of the powers conferred by Article 41 of the American Convention. Archives of the Office of the Special Rapporteur.

³⁰⁸ I/A Court H.R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182 para. 131; IACHR. 2008 Annual Report. Volume II: 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: *Inter-American Legal Framework of the Right to Freedom of Expression*. Para. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008sp/INFORME%20ANUAL%20RELE%202008.pdf>

³⁰⁹ CIDH. *Report on the Situation of Human Rights in Venezuela*. Para. 487. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003sp/indice.htm>

the Republic of regularly scheduled programming. Rather, it must be information that could be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public life.” Principle 5 of the Declaration of Principles explicitly establishes that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”³¹⁰

200. The Office of the Special Rapporteur also recalls, as the Inter-American Court of Human Rights has established, that state authorities are not only justified in speaking out on matters of public interest but also have the duty to do so on certain occasions. However, in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based. It must do so with a greater degree of diligence than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in mind that, as public servants, they are guarantors of the fundamental rights of the individual and, therefore, their statements cannot disregard such rights.³¹¹ This duty of special care is particularly heightened in situations involving major social conflict, public disturbances, or social or political polarization, precisely because of the risks entailed for certain people or groups at a given time.³¹²

201. The Inter-American Court has also held that risky situations can be exacerbated if they are “the object of an official discourse that may cause, suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise [...] freedom of expression.”³¹³

D. Disparaging Statements

202. The Office of the Special Rapporteur learned of several disparaging statements made by senior state authorities against media outlets and reporters critical of the government. According to the information received by the Office of the Special Rapporteur, these statements are common. Some examples are cited below. According to reports, on February 2, during a discussion held with the press at the Carondelet Palace, President Rafael Correa characterized the *Teleamazonas* television channel as a “corrupt” station because of the manner in which it had expressed its opposition to the referendum called by the government. In response to a question posed by the journalist who was interviewing him, the president reportedly stated: “(...) no doubt, there is a corrupt press. And if the shoe fits, wear it! And a large part of that corruption is at *Teleamazonas*.”³¹⁴

³¹⁰ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 226. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20%20abril.pdf>

³¹¹ I/A Court H.R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

³¹² I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 151.

³¹³ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 143.

³¹⁴ Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión*. Available at: <http://www.cpj.org/es/CPJ.es.ecuador.9.1.11.pdf>

203. On February 12, during his Saturday program *Enlace Ciudadano*, President Rafael Correa reportedly characterized media outlets critical of his administration as “assassins of ink.”³¹⁵ On February 28, Communications Minister Fernando Alvarado repeated the same description when calling into question articles published by various critical media.³¹⁶ On another edition of *Enlace Ciudadano*, on February 26, President Correa reportedly reiterated his stigmatizing remarks by calling critical journalists and media outlets “corrupt,” “sensationalist,” and “manipulative,” and stated that the newspaper *El Universo* is a “conspiratorial” and “irresponsible” newspaper after it published information on possible changes to the police structure.³¹⁷ One week later, according to reports, the president reportedly called several private media outlets “manipulators,” “mediocre,” “corrupt,” “conspiratorial,” and “hit men with ink.”³¹⁸ He reportedly repeated similar expressions on the *Enlace Ciudadano* of July 2, 2011.³¹⁹

204. The information received also notes multiple statements against non-governmental organizations critical of the government. According to that information, on the program *Enlace Ciudadano* on June 25, President Correa alleged that two nongovernmental human rights organizations (*Fundamedios* and *Participación Ciudadana*) receive financing from USAID, implying that they serve the interests of others.³²⁰ *Fundamedios* has maintained that there are no limitations on the financing of NGOs with international funds, that these kinds of statements are intended to be disparaging, and that in any case, it has not received such support.³²¹ According to the information received, on June 28, 2011, Communications Secretary Fernando Alvarado issued an “Open Letter to Fundamedios,” which was reprinted by various newspapers around the country, stressing that the actions of this non-governmental organization—which are limited to reporting events relating to issues of freedom of expression, and the content of which has not been refuted by the authorities—more closely resembled “political strategies and military tactics designed to create confusion or promote public opinion trends favorable to the interests of some of its financial backers.” It further indicated that the institution “receives direct funding from USAID” and from the National

³¹⁵ On this same occasion, defending two of his ministers in an alleged corruption case, the president reportedly stated: “The corrupt ones are not in the citizens’ revolution; the corrupt ones are in the press. The shameless crooks that have always wanted to run this country.” Office of the President of the Republic of Ecuador. February 12, 2011. *Enlace Ciudadano* 208. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=showdown&id=788

³¹⁶ Hoy. March 1, 2011. *Alvarado emula a Correa y ataca a la prensa*. Available at: <http://www.hoy.com.ec/noticias-ecuador/alvarado-emula-a-correa-y-ataca-a-la-prensa-461420.html>; El Ciudadano. February 28, 2011. “En el país hay 99,9% de periodistas decentes y honestos”. Available at http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=21873:fernando-alvarado-qen-el-pais-hay-999-de-periodistas-decentes-y-honestosq&catid=2:politica&Itemid=43

³¹⁷ Office of the President of the Republic of Ecuador. February 26, 2011. *Enlace Ciudadano* 210. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=select&id=169; El Ciudadano. February 26, 2011. *Presidente Correa pide a policías judiciales cuidarse de mentiras de diario El Universo*. Available at: http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=21834:presidente-correa-pide-a-policias-judiciales-cuidarse-de-mentiras-de-diario-el-universo&catid=40:actualidad&Itemid=63; Instituto Prensa y Sociedad (IPYS). March 1, 2011. *Rafael Correa acusa al diario de conspirador*. Available at: <http://www.ipys.org/index.php?q=alerta/344>

³¹⁸ Knight Center for Journalism in the Americas. March 9, 2011. *Presidente de Ecuador arrece críticas contra la prensa en medio de crecientes denuncias de censura*. Available at: <http://knightcenter.utexas.edu/es/blog/presidente-de-ecuador-arrece-criticas-contra-la-prensa-en-medio-de-crecientes-denuncias-de-cen>; HispanTV. March 5, 2011. *Correa censura la tergiversación de la prensa*. Available at: <http://www.hispantv.com/Detail.aspx?id=150772>

³¹⁹ Office of the President of the Republic of Ecuador. July 2, 2011. *Enlace Ciudadano* 227. Available at: http://www.presidencia.gob.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=918

³²⁰ Office of the President of Ecuador. June 25, 2011. *Enlace Ciudadano* No 226, Quito-Pichincha. (minute 0:33:40). Available at: http://www.presidencia.gov.ec/index.php?option=com_remository&Itemid=90&func=fileinfo&id=917

³²¹ Fundamedios. June 25, 2011. *Fundamedios ante las declaraciones del Presidente Correa sobre su Financiamiento*. Available at: http://www.facebook.com/note.php?note_id=10150217208582027

Endowment for Democracy (NED).³²² Likewise, the state-owned newspaper *El Telégrafo* announced that journalist Emilio Palacio and the executive director of *Fundamedios*, Cesar Ricaurte, had taken part in an event in Washington organized by the NED, an entity that—according to the newspaper—is tied to the CIA.³²³

205. In relation to these events, the Office of the Special Rapporteur expresses its concern over the statements of public servants that could stigmatize journalists, media outlets, or nongovernmental organizations that publicize information critical of the state's actions. In this respect, public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation by expressing and disseminating their thoughts, such as journalists, media outlets, and human rights defense organizations. They must also bear in mind the context in which they express themselves, in order to ensure that their statements do not amount to, in the words of the Court, "a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of [their] thought."³²⁴

206. As the Office of the Special Rapporteur has stated on prior occasions, diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.³²⁵

E. Constitutional amendment and legislative proposals

207. During 2010, the government advanced a legislative reform bill that had as one of its main objectives the creation of an administrative body with jurisdiction to regulate the content of all media, establish the grounds for liability and the applicable sanctions, and serve as an authority on enforcement of said laws. The Office of the Special Rapporteur intervened on two occasions to point out the problems raised by this bill. President Rafael Correa decided to include a question on this issue in the referendum held on May 7, 2011. He also decided to include in that referendum a question aimed at barring the directors, owners, or shareholders of media outlets from having financial interests in any other sector of the economy besides communications. The questions in the popular referendum related to freedom of expression were as follows:

*Question 3. Do you agree with prohibiting private financial institutions, as well as national private communications companies, their directors, and main shareholders, from being owners or shareholders of companies outside the financial or communications fields, respectively, amending the Constitution as established in attachment 3?*³²⁶

³²² Fernando Alvarado Esquivel. June 28, 2011. *Carta abierta a Fundamedios*. Available at: <http://www.fernandoalvaradoespinel.com/?p=368>

³²³ El Telégrafo. June 29, 2011. *Palacio y Ricaurte disertan en entidad vinculada a la CIA*. Available at: http://www.eltelegrafo.com.ec/index.php?option=com_zoo&task=item&item_id=8223&Itemid=2

³²⁴ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 139; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 151.

³²⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 207. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20abril.pdf>

³²⁶ According to Schedule 3 to Question 3 of the Referendum, Article 312 of the Constitution of Ecuador would be amended to read: "The institutions of the private financial system, as well as private national communications companies,

*Question 9. Do you agree with having the National Assembly, without delay, within the period of time set forth in the Organic Law on the Legislature, issue a Communications Act creating a Regulatory Council to regulate the dissemination of television, radio, and print media content containing messages that are violent, explicitly sexual, or discriminatory, and establishing criteria for the subsequent imposition of liability against the issuing media or journalists?*³²⁷

208. After the votes were counted, the questions obtained a majority of 47,187% and 44,964%, respectively, against a minority of 41,886% and 42,044%, respectively.³²⁸

209. The Office of the Special Rapporteur provided its opinion regarding the pending draft Communications Law on three occasions through letters to the National Assembly.³²⁹ The points addressed by the Office of the Special Rapporteur are still under debate. Among other issues, the Office of the Special Rapporteur indicated that the establishment of a media registry without any distinctions, in which “the medium’s editorial line” must be registered, could constitute an excessive and unnecessary requirement that could have disproportionate effects on certain media and a chilling effect on certain speech. The registration of “editorial and news policies,” as the Office of the Special Rapporteur stated, could give rise to a similar effect.

210. The Office of the Special Rapporteur also found that the grounds for liability provided in the bill are drafted in ambiguous terms that refer to conduct to which it would be particularly difficult to apply the elements of the criminal offense. This grants excessive discretion to the body in charge of enforcing these provisions (the Communication and Information Council), which could be incompatible with the American Convention.³³⁰

211. Furthermore, the Office of the Special Rapporteur has called attention to the fact that the single punitive administrative system in the draft bill covers all media, without making relevant distinctions. In particular, what is lawful in the limited sphere of broadcasting given the use of a public good such as open radio and television frequencies, may not be lawful when applied to

...continuation

their board members and principal shareholders, may not hold, directly or indirectly, shares or interests in companies unrelated to the financial or communications business, as the case may be. The respective oversight bodies shall be in charge of regulating this provision.” (“Las instituciones del sistema financiero privado, así como las empresas privadas de comunicación de carácter nacional, sus directores y principales accionistas, no podrán ser titulares, directa ni indirectamente, de acciones y participaciones, en empresas ajenas a la actividad financiera o comunicacional, según el caso. Los respectivos organismos de control serán los encargados de regular esta disposición”). In addition, the twenty-ninth transitional provision of the Constitution shall would read as follows: “The shares or interests held by institutions of the private financial system, as well as private national communications companies, their board members and principal shareholders, in companies not related to the sectors in which they participate, shall be alienated within one year of the enactment of this amendment by referendum.” (Las acciones y participaciones que posean las instituciones del sistema financiero privado, así como las empresas de comunicación privadas de carácter nacional, sus directores y principales accionistas, en empresas distintas al sector en que participan, se enajenarán en el plazo de un año contado a partir de la aprobación de esta reforma en referendo”). Office of the President of Ecuador. Available at: http://www.presidencia.gob.ec/pdf/final_preguntas.pdf

³²⁷ Office of the President of Ecuador. Available at: http://www.presidencia.gob.ec/pdf/final_preguntas.pdf

³²⁸ National Electoral Council. *Resultados Votación Total*. Available at: <http://app2.cne.gob.ec/resultados/resultadosn.aspx?prv=0>. With regard to question 3: 5,226% of the ballots were blank and 5,701% were invalid, and with respect to question 9: 7,73% of the ballots were blank and 5,262% were invalid.

³²⁹ See: Communications from the Office of the Special Rapporteur to the National Assembly of Ecuador dated December 8, 2009 and August 10, 2010. Available in the archives of the Office of the Special Rapporteur.

³³⁰ The Office of the Special Rapporteur has called attention, for example, to the obligations to differentiate between opinion and news (Article 28), not to disseminate information “without proof” (Article 20), and not to publish information that “[...] endangers human rights” (Article 102 g).

subscriber-based television, the written press in general, specialized print media, or the Internet.³³¹ In this respect, the Office of the Special Rapporteur has recalled that only in the case of radio spectrum regulatory authorities is it admissible to establish administrative oversight over the exercise of some aspects of freedom of expression. Additionally, the Office of the Special Rapporteur has indicated that in any case it must be an administrative authority that is fully independent and autonomous, and its punitive powers must be limited to the exercise of police powers for the irregular use of frequencies granted. It must also meet all of the due process requirements inherent in every punitive system, including the opportunity for judicial review.³³²

212. With respect to penalties, the Office of the Special Rapporteur has maintained that the imposition of a penalty for the abuse of freedom of expression or the satisfaction of the right of correction is the responsibility of judges. Nevertheless, in certain cases, as previously stated, media that use frequencies on the electromagnetic spectrum can be subject to administrative controls for the misuse of those frequencies. In any case, when this occurs, the media have the right to an effective judicial remedy for the review of the administrative decision.

213. At the time of this writing, the National Assembly of the Republic of Ecuador was debating the draft Communications Law.

214. In addition, according to the information received by this Rapporteurship, on October 14, 2011, the President of the Republic introduced two new legislative bills to the Ecuadorean National Assembly for its consideration: the draft of the Telecommunications and Postal Services Act, and the draft of the Comprehensive Criminal Code Act. At the time of this writing, those bills had not yet been debated in the Assembly. According to the information received, the bills have reportedly heightened the tension between the President of the Republic and the media.³³³

215. In its 2009 and 2010 Annual Reports, the Office of the Special Rapporteur had congratulated the government of Ecuador on the drafting of a Criminal Code initiative “that would eliminate, *inter alia*, the offenses of insulting public servants, *desacato*, and certain types of defamation [*injuria*].³³⁴ The Office of the Special Rapporteur considered this positive development as

³³¹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Freedom of Expression and the Internet*. June 1, 2011. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=849&IID=2>

³³² See IACHR. 2009 Annual Report. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting). Paras. 50 *et seq.* Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

³³³ National Assembly of the Republic of Ecuador. Legislative Bills. Available for consultation at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf; CONATEL/SENATEL. October 14, 2011. *Proyecto de Ley de Telecomunicaciones y Servicios Postales*. Available at: http://www.conatel.gob.ec/site_conatel/files/leyes/Proyecto%20de%20Ley%20Org%C3%A1nica%20de%20Telecomunicaciones%20y%20de%20Servicios%20Postales2011.pdf; BBC Mundo. October 29, 2011. *Ecuador: nuevos proyectos de ley avivan pugna entre Correa y los medios*. Available at: http://www.bbc.co.uk/mundo/noticias/2011/10/111028_ecuador_ley_telecomunicaciones_aa.shtml

³³⁴ Communication delivered on November 17, 2009 by the State to the Office of the Special Rapporteur for Freedom of Expression. Note 4-2-321/2009; Ministry of Justice and Human Rights. November 19, 2009. *Anteproyecto de Código Orgánico de Garantías Penales. Borrador para discusión*. Available at: http://www.minjusticia-dhhh.gov.ec/index.php?option=com_content&task=view&id=305&Itemid=210%20target=

an initiative that takes account of the inter-American doctrine and case law on the criminal offense of *desacato*.³³⁵

216. The Office of the Special Rapporteur takes a positive view of the fact that the recently introduced draft of the Comprehensive Criminal Code Act establishes penalties for those public servants who arbitrarily infringe upon freedom of expression.³³⁶ However, the draft of the Comprehensive Criminal Code Act prescribes prison terms of up to 3 years for persons who make accusations against authorities that amount to calumnious and non-calumnious defamation [*injurias calumniosas o no calumniosas*];³³⁷ it prohibits the defense of *exceptio veritatis*;³³⁸ and it imposes criminal liability against foreign authors or facilitators of “defamatory” articles that are reprinted in Ecuador,³³⁹ as well as against those responsible for publishing or reprinting such information,³⁴⁰

³³⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II. Para. 199. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20Abril.pdf>

³³⁶ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 91.- *Violation of freedom of expression and worship*.- Any public or private authority that, through arbitrary or violent means, restricts the free expression of thought shall be punished by a term of imprisonment ranging from three to five years” (“La autoridad pública o privada que por medios arbitrarios o violentos, coartare la facultad de expresar libremente el pensamiento, será sancionada con pena privativa de libertad de tres a cinco años”).

³³⁷ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 119.- *Calumnious accusations against an authority*.- Any person who makes accusations against an authority that constitute calumnious defamation shall be punished by a term of imprisonment ranging from one to three years, and a fine ranging from one to ten times the general minimum monthly wage.

If the accusations against the authority constitute serious, but non-calumnious defamation, the term of imprisonment shall range from six months to two years, and the fine shall range from one to ten times the general minimum monthly wage” (Serán reprimidos con pena privativa de libertad de uno a tres años y multa de una a diez remuneraciones básicas unificadas del trabajador privado en general, los que hubieren dirigido a la autoridad imputaciones que constituyan injuria calumniosa.// Si las imputaciones hechas a la autoridad constituyeren injurias no calumniosas, pero graves, las penas privativas de libertad serán de seis meses a dos años y multa de una a diez remuneraciones básicas unificadas del trabajador privado en general”).

³³⁸ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 123.- *Inadmissibility of evidence*.- In the case of a defendant charged with non-calumnious defamation, evidence of the truth of the accusations shall not be admissible” (“Al acusado de injuria no calumniosa, no se admitirá prueba sobre la verdad de las imputaciones”).

³³⁹ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

“Article 124.- *Defamation published abroad*.- Defamatory statements, whether calumnious or not, published in foreign media may result in the prosecution of the persons who send such articles, or order their placement, or contribute to the introduction or distribution of such media in Ecuador” (“Las injurias, calumniosas o no, publicadas en órganos de publicidad del extranjero, podrán ser perseguidas contra las personas que hubieren enviado los artículos o la orden de insertarlos, o contribuido a la introducción o a la distribución de tales órganos en el Ecuador”).

among other provisions. In contrast to the current proposed bill, the previously drafted provisions were consistent with the Inter-American standards on freedom of expression and would prevent the occurrence of some of the acts reported herein.³⁴¹

217. In its response to the to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador held at the IACHR's headquarters in Washington, D.C. on October 25, 2011, the Ecuadorean State addressed the concern that individuals who offend the honor of a public servant could be prosecuted under the regulations to the new draft Comprehensive Criminal Code. The State indicated that it could not make a conclusive statement on the issue, as it dealt with a bill introduced to the legislature that "is not binding in nature, and does not give rise to rights or obligations for or against any person; nor is it even a mere expectation, given that the content of a law can change substantially in the debate process." The State emphasized that "Any provision enacted following the appropriate procedures will be consistent with a reading of the Ecuadorian legal system as a whole."³⁴²

F. Communications Media

218. According to the information provided to the Office of the Special Rapporteur, on April 3 police officers in the town of Macas, in the province of Morona-Santiago, closed the radio station *La Voz de la Esmeralda Oriental Canela*, cutting cables and confiscating transmission equipment in compliance with a shutdown order from the National Council of Telecommunications (CONATEL). Since September, CONATEL had refused to renew the license for the frequency on which the station was operating, awarded ten years earlier, alleging noncompliance with technical requirements.³⁴³ The owner of the station, Wilson Cabrera, maintained that the shutdown occurred

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³⁴⁰ National Assembly of the Republic of Ecuador. Legislative Bills. Available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>; Lexis Ecuador. *Proyecto de Ley Código Orgánico Integral Penal*. October 18, 2011. Available at: http://www.lexis.com.ec/webtools/biblioteca_silec/Documentos/Noticias/2011-18-10-Proyecto%20de%20Ley%20del%20C%C3%B3digo%20Org%C3%A1nico%20Integral%20Penal.pdf

"Article 125.- *Reproduction of defamatory publications.*- Persons who reproduce defamatory articles, images, or symbols, are also liable for defamation in any of its forms. Neither in this case, nor in the case of the previous article, may it be alleged as grounds for justification or excuse that such articles, images, or symbols are only reproductions of publications made in Ecuador or abroad" ("Son también responsables de injurias, en cualquiera de sus clases, los reproductores de artículos, imágenes o emblemas injuriosos, sin que en este caso, ni en el del artículo anterior, pueda alegarse como causa de justificación o excusa que dichos artículos, imágenes o emblemas no son otra cosa que la reproducción de publicaciones hechas en el Ecuador o en el extranjero").

³⁴¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II. Para. 199. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/RELATORIA%202010%20ESP%20P%20Abril.pdf>; IACHR. 2009 Annual Report. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 190. Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

³⁴² Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 9-10. Available in the Archives of the Office of the Special Rapporteur.

³⁴³ Article 9 of the Law of Radio and Television of Ecuador establishes that "the concesión of the same channel or channels will be renewable successively for the same periods without other requirements apart from the confirmation of the Superintendent of Telecommunications, based on the regular technical and administrative controls that it applies, to ensure that the station carries out its activities in observance of the Law and its regulations. To obtain this renewal it is not necessary to enter into a new contract. The Superintendent cannot suspend the operation of the station during this process." ("concesión será renovable sucesivamente con el o los mismos canales y por períodos iguales, sin otro requisitos que la comprobación por la Superintendencia de Telecomunicaciones, en base a los controles técnicos y administrativos regulares que lleve, de que la estación realiza sus actividades con observancia de la Ley y los reglamentos. Para esta renovación no será necesaria, la celebración de nuevo contrato. La Superintendencia no podrá suspender el funcionamiento de la estación durante este trámite"). Nevertheless, the law does not Estbaliz the technical and administrative requirements that should be

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while an appeal was still pending, without any prior notice and based on incorrect grounds by CONATEL.³⁴⁴

219. In public statements, the State indicated that it made the decision not to renew the license of the radio station “due to the fact that in administrative proceedings against these stations, the recommendations of the Comptroller General were not heeded” and emphasized that “when the station was inspected, it was operating within the parameters authorized in the contract, and it was considered that its activities were being carried out in observance of the Law and Regulations; however, in the administrative proceedings brought against this station from 2000 to 2010, various sanctions were discovered for failure to comply with the recommendations made by the Comptroller General in the general report of the National Council of Radio Broadcasting and Television, which are binding upon public entities.”³⁴⁵ In particular, in its Resolution No. RTV-545-17-CONATEL-2010,³⁴⁶ CONATEL decided not to renew the concesión “for having operated a radio station without the required authorization from a competent authority in application of the observations of the Comptroller General of the State [...] and Article 11(c) of the General Regulations to the Law of Radio Broadcasting and Television³⁴⁷; and in compliance with Article 67(a) of the Law of Radio Broadcasting and Television³⁴⁸ and to declare that the concession has ended

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observed, and these are set out in broad and ambiguous terms. Similarly, in this case, the procedures established in Article 71 of the same law, regarding the imposition of sanctions, were not observed. Among these procedures is the minimum guarantee that “the Superintendent will give prior notice to the concession holder, letting the person know of any infractions received, in order that the holder may present proof that the law has been followed within a period of eight days.” (“la Superintendencia notificará previamente al concesionario haciéndole conocer la falta o faltas en que hubiere incurrido, para que, en el término de ocho días, presente las pruebas de descargo que la Ley le faculta”). Law of Radio and Television Frequency. Supreme Decree No. 256-A. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103

³⁴⁴ Committee to Protect Journalists (CPJ). April 5, 2011. *El CPJ condena clausura de radio provincial en Ecuador*. Available at: <http://cpj.org/es/2011/04/el-cpj-condena-clausura-de-radio-provincial-en-ecu.php>; Hoy. April 5, 2011. *Equipos de Radio Canela son incautados*. Available at: <http://www.hoy.com.ec/noticias-ecuador/la-radio-canela-de-macas-fue-clausurada-467947.html>; Reporters Without Borders. April 5, 2011. *La radio La Voz de la Esmeralda condenada al silencio: “una agresiva medida cuyos motivos son poco claros”*. Available at: <http://es.rsf.org/ecuador-el-cierre-de-una-emisora-urge-a-07-01-2011,39250.html>

³⁴⁵ National Assembly of the Republic of Ecuador. October 19, 2011. *Superintendente de Telecomunicaciones explicó sanciones a ciertas radios se debió a que incumplieron recomendaciones de la Contraloría*. Available at: <http://asambleanacional.gov.ec/201110196632/noticias/boletines/superintendente-de-telecomunicaciones-explico-sanciones-a-ciertas-radios-se-debio-a-que-incumplieron-recomendaciones-de-la-contraloria.html>

³⁴⁶ National Council of Telecommunications (CONATEL). Resolución RTV-545-17-CONATEL-2010. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=845:resoluciones-julio-septiembre-2010&catid=243:resoluciones-2010&Itemid=201

³⁴⁷ Article 11: “Without prejudice to Article 10 of the Law of Radio and Television Frequency, radio and television frequencies will not be granted in the following cases: c) to natural or legal persons who have established radio or television frequencies without prior authorization from CONATEL or the Superintendent of Telecommunications.” (Sin perjuicio a lo establecido en el Art. 10 de la Ley de Radiodifusión y Televisión no se concederá frecuencias de radiodifusión o televisión, en los siguientes casos: c) A personas naturales o jurídicas que sin autorización del CONATEL o de la Superintendencia de Telecomunicaciones, hayan puesto en funcionamiento estaciones de radiodifusión o televisión”). General Regulations for the Law of Radio and Television Frequencies. Decree No. 3398. Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103

³⁴⁸ Article 67(a) of the Law of Radio and Television Frequencies states that the “concesión of a channel or frequency for the installation and operation of a radio or televisión station ends: a) When the term of the concesión has expired, Nules the concesión holder has a right to renewal, in the terms of this Law” (“concesión de canal o frecuencia para la instalación y funcionamiento de una estación de radiodifusión y televisión, termina: a) Por vencimiento del plazo de la concesión, salvo que el concesionario tenga derecho a su renovación, de acuerdo con esta Ley”). Law of Radio and Television Frequency. Supreme Decree No. 256-A. Available at:

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because the period of its contract has expired [footnotes are not original].” CONATEL later dismissed the extraordinary motion for reconsideration that was filed to challenge this decision.³⁴⁹

220. The Office of the Special Rapporteur reminds the State that decisions that are so sensitive for freedom of expression such as those dealing with the closure, revocation, or extinction of broadcasting concessions and permits, must be the result of a specific, open administrative proceeding, in which due process and legitimate defense are fully guaranteed as prior conditions for the adoption of a decision, and in which it is demonstrated that whoever is utilizing the spectrum neither has nor has the possibility of having the right to such use or has incurred in one of the legal causes that give rise to the decision.³⁵⁰ In this same respect, it is appropriate to recall that “The criteria that should guide the assignation of licenses must be clearly and precisely provided for in the relevant laws, in such a way as to protect petitioners from arbitrary action. The procedures must be transparent, clear and have predetermined deadlines. Likewise, the requirements for obtaining a license should be set forth in clear and precise laws that prevent discriminatory political factors that could, for example, affect assignation on account of the political, religious or other ideas of the person requesting the license.” On this point, principle 13 of the IACHR’s Declaration of Principles on Freedom of Expression maintains that, “The exercise of power [...] by the state [...] [and] the concession of radio and television broadcast frequencies [...] with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”³⁵¹ The Office of the Special Rapporteur additionally recalls that principle 12 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

221. In addition, this Office of the Special Rapporteur has been informed that, “According to the Radio and Television Frequency Audit Commission, the media landscape in Ecuador is largely dominated by eight main groups.”³⁵² One such group was the so-called “Isaías Group,” which has been state-run since July 8, 2008.³⁵³

222. In this respect, the information received indicates that part of the media considered “private” are reportedly being classified by the government as “seized” private media, in spite of the fact that they are administered and used directly by the state. According to that information, in

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http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&id=586:marco-regulatorio-sector-radio-difusion-y-television&catid=48:normas-del-sector&Itemid=103

³⁴⁹ National Council of Telecommunications (CONATEL). Resolution RTV-808-26-CONATEL-2010. Available at: http://www.conatel.gob.ec/site_conatel/images/stories/resolucionesconatel/2010/RTV-808-26-CONATEL-2010.pdf

³⁵⁰ IACHR. Annual Report 2009. *Annual Report of the Special Rapporteur for Freedom of Expression*. Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. P. 196. Para. 668. Available at: <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>

³⁵¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009. Para. 63. Available at: <http://www.cidh.org/pdf%20files/Estandares%20para%20radiodifusion%20includyente.pdf>

³⁵² United Nations Educational, Scientific and Cultural Organization (UNESCO). *Análisis del Desarrollo Mediático en Ecuador – 2011*. p. 15. Available at: <http://unesdoc.unesco.org/images/0019/001925/192563s.pdf>

³⁵³ United Nations Educational, Scientific and Cultural Organization (UNESCO). *Análisis del Desarrollo Mediático en Ecuador – 2011*. p. 15. Available at: <http://unesdoc.unesco.org/images/0019/001925/192563s.pdf>

recent years the government has reportedly created a media network and has become one of the key actors in the administration and ownership of communications media in Ecuador.³⁵⁴

223. This Office of the Special Rapporteur recalls that principle 12 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

224. In Official Letter No. 05303 from the Office of the Attorney General, which contains the Ecuadorean State's response to the questions posed to it at the Public Hearing on the Situation of the Right to Freedom of Expression in Ecuador, the Ecuadorean State discussed the anti-monopoly rules that are in effect in Ecuador with respect to the media for purposes of maintaining democratic debate. The State indicated that the third section of the Constitution of the Republic provides for "equal access to the use of radio spectrum frequencies for the management of public, private and community radio and television stations," and prohibits the "direct or indirect oligopolistic or monopolistic ownership of the media and use of frequencies." The State underscored that the 2009 Frequency Audit Report of the Frequency Audit Commission considered that the "concentration of radio and television frequencies in Ecuador, in clear violation of the constitutional provisions currently in force, is the result of the sale of corporate assets, that is, frequencies, by private licensees, both natural persons and legal entities, in a true process of improper appropriation of public goods, apparently justified,"³⁵⁵ and that therefore it was necessary to democratize the media, which the State considered to be in the "imperative public interest of the Ecuadorean State."³⁵⁶

225. The State indicated that this was the basis for enacting the Twenty-third Amendment and Repeal Provision of the Organic Law for the Regulation and Control of the Market, which "restricts shareholdings in companies other than communications companies for those persons who possess more than 6% of the stock or shares of a national media outlet." It additionally stated that the second debate of the Communications Act before the National Assembly of Ecuador aims to "develop the constitutional precepts" previously mentioned. The State stressed that it considered it "improper to discuss a legislative bill whose text has not yet been determined."³⁵⁷

³⁵⁴ Committee to Protect Journalists (CPJ). September 1, 2011. *Ecuador bajo Correa: confrontación y represión*. Available at: <http://www.cpj.org/es/CPJ.es.ecuador.9.1.11.pdf>

³⁵⁵ Frequency Audit Commission. 2009 Frequency Audit Report. Cited in the Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. p. 2. Available in the Archives of the Office of the Special Rapporteur.

³⁵⁶ Communication from the State of Ecuador, Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 1-2. Available in the Archives of the Office of the Special Rapporteur.

³⁵⁷ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. p. 2. Available in the Archives of the Office of the Special Rapporteur. The Office of the Special Rapporteur has had the opportunity to refer to the different legislative bills on the issue in letters addressed to the President of the National Assembly of Ecuador dated September 15, 2011; August 10, 2010, and December 8, 2009. Available in the Archives of the Office of the Special Rapporteur.

226. The State noted that its Constitution incorporated the right to communication into the legal system as a fundamental economic, social, and cultural right in addition to the rights to freedom of expression, information, and opinion. The State underscored that the structural change is meant to decentralize ownership of the “frequency licenses held by the private/commercial sector [...] to the detriment of the public and community sectors.” The State emphasized that the principles contained in Articles 1, 2, 3, 4, 25 and 26 of the Draft Communications Act “promote access to a democratic, inclusive, participatory, pluricultural, and intercultural debate.”³⁵⁸

10. El Salvador

A. Progress

227. According to information received, the San Salvador Trial Court for Organized Crime Matters convicted three individuals on March 9 for their direct involvement in the September 2, 2009 murder of Christian Poveda, a Franco-Spanish documentary filmmaker. The sentences handed down by the court range from 20 to 30 years in prison. According to what the Office of the Special Rapporteur learned, two individuals were convicted as the direct perpetrators and masterminds of the crime against Poveda, and one person was convicted as an accomplice. In the same trial, eight other people accused of participating in the crime were given lesser sentences of four years in prison for having belonged to gangs or illegal groups, and 20 suspects were acquitted. In 2008, the journalist had produced the documentary “La Vida Loca,” which depicts the daily life of gangs in El Salvador. The individuals who killed Poveda were members of one of the groups he had filmed.³⁵⁹

228. The Office of the Special Rapporteur expresses its satisfaction at the enactment of Access to Public Information Act by the Legislative Assembly of El Salvador on March 3. According to the information received, the Act entered into force on May 5, and citizens will be able to use it to request information beginning in January 2012, after the public institutions take the necessary actions to put it into practice.³⁶⁰ The Act had originally been passed by the Legislative Assembly on December 2, 2010, but the President remanded it with remarks that were then partially accepted by Congress.³⁶¹ The Access to Public Information Act recognizes the right of every citizen to request and receive truthful and timely information generated by, managed by, or in the possession of the State. The law establishes the criteria for defining the concepts of public, confidential, and classified information; it creates administrative structures within state agencies to receive and process requests for information, and it defines the procedures for appealing denials. It also creates the Institute for Access to Public Information, which oversees the defense and enforcement of the right

³⁵⁸ Communication from the State of Ecuador. Office of the Attorney General. Official Letter No. 05303. December 1, 2011. Response to the questions posed at the October 25, 2011 Thematic Hearing on the Situation of Freedom of Expression in Ecuador. pp. 3-4. Available in the Archives of the Office of the Special Rapporteur.

³⁵⁹ Reporters Without Borders/IFEX. March 11, 2011. *RSF reacts to guilty verdict for filmmaker's killers with mixture of relief and frustration*. Available at: http://www.ifex.org/el_salvador/2011/03/11/poveda_murder/es/. El País. March 10, 2011. *Condenados a prisión 11 pandilleros por el asesinato de Christian Poveda*. Available at: http://www.elpais.com/articulo/internacional/Condenados/prision/pandilleros/asesinato/Christian/Poveda/elpepuint/20110310/elpepuint_21/Tes

³⁶⁰ Office of the President of El Salvador. September 29, 2011. *Gobierno se prepara para implementar la Ley de Acceso a la Información Pública*. Available at: <http://www.presidencia.gob.sv/index.php/novedades/noticias/item/1445-gobierno-se-prepara-para-implementar-la-ley-de-acceso-a-la-informacion-publica.html>; EFE News Service. March 3, 2011. *El Congreso salvadoreño ratifica la Ley de Acceso a la Información Pública*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5hRILi4OZyvnY9UllvsUaFQAKGqQA?docId=1477676>

³⁶¹ La Prensa Gráfica. January 6, 2011. *Funes observa Ley de Acceso a la Información*. Available at: <http://www.laprensagrafica.com/el-salvador/politica/162741-funes-observa-ley-de-acceso-a-la-informacion.html>; Associated Press/Prensa Libre. January 6, 2011. *Presidente de El Salvador veta Ley de Acceso a la Información*. Available at: http://www.prensalibre.com/internacionales/Presidente-Salvador-Ley-acceso-Informacion_0_403759837.html

to access to information, and is composed of five members selected by the President of the Republic from short lists presented by civil society organizations.³⁶² The regulations to the Act took effect on September 10.³⁶³ Journalistic and civil society organizations have called into question the content of the regulations, asserting that they establish grounds for the classification of information that would limit the enforcement of the law (Article 29 of the regulations); they also take issue with the fact that Article 73 grants the President the power to veto the short lists of candidates presented by civil society for membership in the Institute for Access to Public Information. Article 29 of the regulations establishes the following grounds for classifying information: “National Security and/or Political Security”, “national interests, especially if they pertain to public health, or international affairs, and the economic or trade interests of the country”; or when “the proper performance of the duties of the requested body is affected”, particularly in judicial investigations and proceedings, or deliberations leading up to the adoption of resolutions, measures, or policies.³⁶⁴

229. On September 8, the Legislative Assembly approved an amendment to the Criminal Code that replaces prison sentences for crimes against honor with monetary penalties, and establishes criteria for a balancing test in situations where there is a conflict between the rights to information and freedom of expression and rights to honor, privacy, and image. In addition, the bill introduces an amendment according to which the dissemination of allegedly defamatory, libelous, or slanderous messages is understood as legitimate when it “satisfies the function of the free flow of information in a democratic society; when the facts refer to a person with some kind of public relevance, and its disclosure is of general interest; and when it refers to facts made public by individuals engaged in the practice of news reporting, who disclose it without having knowledge of the falsehood of the information, and having diligently verified the sources.” On September 30, Salvadoran President Mauricio Funes remanded the bill to Congress with partial remarks referring to six of the proposed reforms.³⁶⁵ At the time of this writing, the Legislative Assembly has not made a decision with respect to the matter.³⁶⁶

³⁶² Legislative Assembly of the Republic of El Salvador. December 2, 2010. *Avalan Ley de Acceso a la Información*. Available at: <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/avalan-ley-de-acceso-a-la-informacion>; Legislative Assembly of the Republic of El Salvador. December 2010. *Ley de Acceso a la Información Pública*. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-acceso-a-la-informacion/?searchterm=ley%20de%20acceso>; Knight Center for Journalism in the Americas. December 12, 2010. *Salvadoran Congress approves public information access law*. Available at: <http://knightcenter.utexas.edu/es/blog/asamblea-salvadorena-aprueba-ley-de-acceso-la-informacion-publica>; Office of the President of El Salvador. September 29, 2011. *Gobierno se prepara para implementar la Ley de Acceso a la Información Pública*. Available at: <http://www.presidencia.gob.sv/index.php/novedades/noticias/item/1445-gobierno-se-prepara-para-implementar-la-ley-de-acceso-a-la-informacion-publica.html>

³⁶³ Office of the President of El Salvador. September 7, 2011. *Funes manda publicar reglamento de la Ley de Acceso a la Información Pública*. Available at: <http://www.presidencia.gob.sv/index.php/novedades/noticias/item/1402-presidente-funes-manda-a-publicar-reglamento-de-la-ley-de-acceso-a-la-informacion-publica.html>; Office of the President of El Salvador. September 1, 2011. *Executive Order No. 136. Regulations to the Access to Public Information Act*. Available for consultation at: (archives download site) <http://www.presidencia.gob.sv/novedades/publicaciones/decretos-ejecutivos.html>

³⁶⁴ Office of the President of El Salvador. September 1, 2011. *Executive Order No. 136. Regulations to the Access to Public Information Act*. Available for consultation at: (archives download site) <http://www.presidencia.gob.sv/novedades/publicaciones/decretos-ejecutivos.html>; Fundación de Estudios para la Aplicación del Derecho (FESPAD). September 13, 2011. *Organismos en desacuerdo con Reglamento de Ley de Acceso a la Información*. Available at: <http://www.fespad.org.sv/organismos-critican-reglamento-de-ley-de-acceso-a-la-informacion-publica>; El Mundo. September 12, 2011. *Criticas a reglamento de información pública*. Available at: <http://www.elmundo.com.sv/politica/16905-criticas-a-reglamento-de-informacion-publica.html>. El Salvador.com. September 29, 2011. *Reglamento anula Ley de Acceso a la Información Pública*. Available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47673&idArt=6245239

³⁶⁵ Office of the President of El Salvador. September 30, 2011. *Presidente observa Decreto Legislativo referido a reformas sobre la crítica en los medios de comunicación*. Available at: <http://www.presidencia.gob.sv/novedades/noticias/item/1447-presidente-observa-decreto-legislativo-referido-a-reformas-sobre-la-critica-en-los-medios-de-comunicaci%C3%B3n.html>; Legislative Assembly of the Republic of El Salvador. Undated.

230. The Office of the Special Rapporteur finds the proposed reform enormously important. The tenth principle of the IACHR's Declaration of Principles on Freedom of Expression indicates that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

231. The Office of the Special Rapporteur learned that on July 22, 2011 the Third Criminal Chamber of the First Central Division dismissed a lawsuit alleging criminal defamation against three directors and a journalist from the newspaper *La Prensa Gráfica*, which had been filed by a member of the military referred to in an article published on November 30, 2010. The case arose when *La Prensa Gráfica* published that unidentified sources from the United States Drug Enforcement Administration (DEA) and the National Civilian Police of El Salvador reportedly revealed the names of two members of the military—one active and one retired—under investigation for alleged ties to organized crime. According to the information received, the Sixth Trial Court of San Salvador had ruled the claim inadmissible at the first instance, as it failed to find criminal intent in the publication, and considered that the matter involved the conveyance of information from third parties. Subsequently, the Third Criminal Chamber dismissed the motion for appeal.³⁶⁷

B. Assaults and threats against journalists and the media

232. The Office of the Special Rapporteur learned of the murder of press photographer Alfredo Hurtado, which occurred on the night of April 25 on the highway between Ilopango and San Salvador. According to the information received, the journalist was on his way to work when two armed men boarded the bus he was riding and shot him several times. The murderers did not steal any of his belongings, and reportedly escaped to an area in which criminal groups are known to operate. Hurtado was working as a night cameraman for the news program *Teleprensa*, of *Canal 33*,

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Decree No. 836. *Reforms to the Criminal Code.* Available at: http://www.observatoriolegislativo.org.sv/attachments/article/1556/dict105_leg_2011.pdf

³⁶⁶ On November 9, 2011, the Legislative Assembly partially approved the observations presented by President Mauricio Funes and confirmed the text of the law that established fines instead of prison terms for those who are sentenced for the crimes of libel, slander or defamation. Legislative Assembly of the Republic of El Salvador. November 9, 2011. *Aprueban parcialmente observaciones presidenciales sobre delitos contra el honor.* Available at: <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/aprueban-parcialmente-observaciones-presidenciales-sobre-delitos-contra-el-honor>; Official Bulletin (Diario Oficial). Republic of El Salvador. December 7, 2011. Decree No. 836. Vol. 393. No. 229. P. 5 *et seq.* Available at: <http://www.diariooficial.gob.sv/diarios/do-2011/12-diciembre/07-12-2011.pdf>

³⁶⁷ Judiciary of El Salvador. Third Criminal Chamber of the First Central Division. July 22, 2011. Judgment of 10:42 a.m. on July 22, 2011. REF 128-11. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; *La Prensa Gráfica*. July 27, 2011. *Victoria de la libre expresión fallos a favor de LPG.* Available at: <http://m.laprensagrafica.com/2011/07/27/victoria-de-la-libre-expresion-fallos-a-favor-de-lpg-2/>; *El Mundo*. July 26, 2011. *No admiten demanda contra publicación La Prensa Gráfica.* Available at: <http://www.elmundo.com.sv/nacionales-14235-no-admiten-demanda-contra-publicacion-la-prensa-grafica.html>; Latin American Observatory for Freedom of Expression. Undated. Report 1127. *El Salvador. Sala Penal rechaza demanda por calumnia contra diario La Prensa Gráfica.* Available at: http://www.felatracs.net/portal/index.php?option=com_content&view=article&id=1305:reporte-1127-&catid=15:ola&Itemid=46; *La Prensa Gráfica*. November 30, 2010. *DEA vincula a ex militares con Los Zetas.* Available at: <http://m.laprensagrafica.com/2010/11/29/dea-vincula-a-ex-militares-con-los-zetas/>; *Diario CoLatino*. July 29, 2011. "Si tuviera participación con los Zetas no estaría aquí". Available at: <http://www.diariocolatino.com/es/20110729/nacionales/95004/%C2%ABSi-tuviera-participaci%C3%B3n-con-los-Zetas-no-estuviera-aqu%C3%AD-Soy-inocente%C2%BB-Teniente-Coronel-Rodr%C3%ADguez-Mart%C3%ADnez.htm>

and had more than 20 years of experience. He reported daily on criminal acts and information surrounding acts of gang violence. The Salvadoran police authorities have suggested several theories on the motive for the murder. Spokespersons from the company where he worked and Salvadoran journalism organizations do not rule out the possibility that the crime could be related to his professional activities as a cameraman.³⁶⁸

233. The Office of the Special Rapporteur urges the Salvadoran authorities to investigate the motive for the murder, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim's relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society's right to freedom of expression.

234. The Office of the Special Rapporteur was informed of several threats reportedly received by the *Victoria* community radio in the department of Cabañas during the first half of the year. On January 11, an anonymous note reportedly warned the station's staff to leave their jobs or they would be killed. "The question is who will be the third one," said the note, in reference to two environmental activists who had been murdered in December of 2010.³⁶⁹ On April 30, and May 2, the station again received threatening messages signed by an organization that called itself the "Extermination Group." Members of the station believe that the threats are the consequence of pro-environmental positions expressed on the radio, and its criticism of mining projects.³⁷⁰

235. According to the ninth principle of the IACHR's Declaration of Principles on Freedom of Expression, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

11. United States

A. Positive developments

236. On December 21, 2010, the Federal Communications Commission (FCC) declared network neutrality, by enacting a series of rules to ensure equal access rights to the Web for providers and consumers, to prevent providers from regulating traffic, and to ensure that users can

³⁶⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Press Release R38/11- Office of the Special Rapporteur Condemns the Murder of a Cameraman in El Salvador*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=839&IID=2>; Reporters Without Borders. April 26, 2011. *El Salvador: Asesinado el cámara de televisión Alfredo Hurtado*. Available at: <http://www.rsf-es.org/news/el-salvador-asesinado-el-camara-de-television-alfredo-hurtado/>; Inter-American Press Association (IAPA). April 27, 2011. *Murder of cameraman in El Salvador brings IAPA condemnation, call for investigation*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4551&idioma=sp

³⁶⁹ World Association of Community Radio Broadcasters (AMARC). January 14, 2010. *AMARC repudia amenazas a personal de Radio Victoria de El Salvador*. Available at: <http://www.agenciapulsar.org/nota.php?id=16564>; Diario CoLatino. February 1, 2011. *Radio Victoria denuncia nuevas amenazas de muerte en PDDH*. Available at: <http://www.diariocolatino.com/es/20110201/nacionales/89026/>

³⁷⁰ German Press Agency (DPA)/La Prensa Gráfica. May 4, 2011. *El Salvador: Periodistas de radio comunitaria reciben amenazas de muerte*. Available at: <http://www.laprensagrafica.com/el-salvador/lodeldia/189099-el-salvador-periodistas-de-radio-comunitaria-reciben-amenazas-muerte.html>; Etcétera. May 4, 2011. *AMARC-ALC. Escuadrones de la Muerte amenazan nuevamente a periodistas de Radio Victoria*. Available at: <http://www.etcetera.com.mx/articulo.php?articulo=7566>

access content of their choice without being blocked.³⁷¹ According to the FCC, “The Internet has thrived because of its freedom and openness – the absence of any gatekeeper blocking lawful uses of the network or picking winners and losers online. Consumers and innovators do not have to seek permission before they use the Internet to launch new technologies, start businesses, connect with friends, or share their views.”³⁷² According to the information received, the rules require all broadband providers to publicly disclose their network management practices, restrict the blocking of Internet content and applications, and refrain from engaging in unreasonable discrimination in transmitting lawful content. The FCC explained that the decision was necessary in view of evidence of acts by providers that posed potential risks to the openness of the Internet, by blocking or discriminating against certain content and applications without making those practices transparent to consumers. It also cited the fact that providers may have financial interests in services that could compete with other online services and content. According to the FCC, the purpose of these rules is to ensure that consumers are able to continue making their own decisions about the applications, services, and content that they access and use, create, or share with others. In the FCC’s view, this openness promotes competition and reinforces a virtuous circle of investment and innovation.³⁷³

237. On December 17, 2010 the U.S. House of Representatives and the U.S. Senate passed the Local Community Radio Act, which makes it easier to obtain frequency licenses and opens space on the dial to more stations by reducing the required distance between one frequency and another to prevent interference. According to the information received, the reform not only will allow new stations to emerge in rural areas—where the regulations on distance between frequencies was not justified, due to the lower density of stations—but also will make it possible for new radio stations to emerge in urban areas. President Barack Obama signed the law on January 7, 2011.³⁷⁴

238. The Office of the Special Rapporteur notes with satisfaction that the masterminds of the murder of journalist Chauncey Bailey were tried and convicted. In 2007, journalist Chauncey Bailey, the then-Editor in Chief of *The Oakland Post*, was shot to death after investigating alleged financial irregularities at a local bakery in Oakland, California. A few days after the incident, the perpetrator of the murder, Devaughndre Broussard, confessed.³⁷⁵ The masterminds of the murder, Yusuf Bey IV and Antoine Mackey, were found guilty by a jury on June 9, 2011 and sentenced to life in prison on August 26 for having ordered the journalist’s murder.³⁷⁶ After his death, local media

³⁷¹ See IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 245. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

³⁷² Federal Communications Commission (FCC). December 21, 2010. *FCC acts to preserve Internet freedom and openness*. Available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db1221/DOC-303745A1.pdf

³⁷³ Federal Communications Commission (FCC). December 21, 2010. *FCC acts to preserve Internet freedom and openness*. Available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db1221/DOC-303745A1.pdf; Wall Street Journal. December 22, 2010. *Internet Gets New Rules of the Road*. Available at: <http://online.wsj.com/article/SB10001424052748703581204576033513990668654.html>; Knight Center for Journalism in the Americas. December 24, 2010. *New FCC rules guarantee open and free Internet in the U.S.* Available at: <http://knightcenter.utexas.edu/blog/new-fcc-rules-guarantee-open-and-free-internet-us>

³⁷⁴ Congress of the United States of America. December 17, 2010. H.R 6533: *Local Community Radio Act of 2010*. Available at: <http://thomas.gov/cgi-bin/query/z?c111:H.R.6533:#>; The Washington Post. January 7, 2011. *Advocates rejoice as Obama signs Local Community Radio Act*. Available at: http://voices.washingtonpost.com/posttech/2011/01/advocates_rejoice_as_obama_sig.html

³⁷⁵ See IACHR. 2007 Annual Report. OEA/Ser.L/V/II.131, Doc. 34 ver. 1. March 8, 2008. Vol. II: *Report of the Office of the Special Rapporteur for Freedom of Expression*. Paras. 104 & 237. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

³⁷⁶ Reporters Without Borders. August 29, 2011. *Cadena perpetua para el autor intelectual del asesinato de Chauncey Bailey y su cómplice: “La justicia perdió demasiado tiempo”*. Available at: <http://es.rsf.org/estados-unidos-cadena-perpetua-para-el-autor-29-08-2011,40868.html>; Chauncey Bailey Project. August 26, 2011. *Life terms for two men who*

workers organized an *ad hoc* coalition called “The Chauncey Bailey Project,” in order to establish the facts of the murder and finish the investigative journalism story that Bailey had begun. It reportedly played an important role in the investigation leading to the eventual conviction of the perpetrators.³⁷⁷ According to reports, Chauncey Bailey was the first journalist to be killed in the United States because of his work since 1976.

239. The Office of the Special Rapporteur learned that the Hawaii state legislature approved a two-year extension of a law that protects journalists and bloggers from revealing their sources or their work-related notes and documents. This law, called the “Shield Law,” was originally enacted in 2008 and will now be in effect until 2013.³⁷⁸

240. On March 2, the Department of State released documents concerning the policies of the administration of former President George W. Bush with respect to the detention of “enemy combatants” at Guantánamo Bay and the “significant risks” to the general public if the detainees were released. The information was turned over to the organization Judicial Watch after it filed a Freedom of Information Act (FOIA) request in 2009.³⁷⁹

B. Actions in response to leaks of classified government information

241. On May 23, in the case brought by the Department of Justice against Jeffrey Sterling, a former Central Intelligence Agency (CIA) agent accused of leaking classified documents,³⁸⁰ *New York Times* reporter James Risen was subpoenaed by the federal district court in Alexandria, Virginia at the request of the Department of Justice to testify against Sterling and reveal the sources of information used in his book.³⁸¹ According to the information received, the

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murdered journalist Chauncey Bailey. Available at: <http://www.chaunceybaileyproject.org/2011/08/26/life-terms-for-two-men-who-murdered-journalist-chauncey-bailey/>

³⁷⁷ International Freedom of Expression Exchange (IFEX). June 15, 2011. *Justice served in Chauncey Bailey case thanks to journalist collective*. Available at: http://www.ifex.org/united_states/2011/06/15/bailey_murderers_sentenced/; Knight Center. September 7, 2011. *Dos personas son condenadas a cadena perpetua por el asesinato en 2007 de periodista en California*. Available at: <http://knightcenter.utexas.edu/es/blog/dos-personas-son-condenadas-cadena-perpetua-por-el-asesinato-en-2007-de-periodista-en-californi>

³⁷⁸ The law, HB 2557, protects journalists and news hosts currently or previously linked to any media outlet, including digital media, from being compelled by a legislative, executive, judicial, or other official to reveal his or her sources or work-related notes. Star Advertiser. April 28, 2011. *Legislators extend Shield law protecting journalists' sources*. Available at: <http://www.staradvertiser.com/news/breaking/120944789.html>; House of Representatives, State of Hawaii. HB No. 2557. Available at: http://www.capitol.hawaii.gov/session2008/Bills/HB2557_CD1_.htm; Bloomberg Businessweek. April 29, 2011. *Journalist shield law extension passes in Hawaii*. Available at: <http://www.businessweek.com/ap/financialnews/D9MTDO600.htm>; Knight Center for Journalism in the Americas. May 4, 2011. *Hawaii aprueba extensión de dos años a ley que protege el secreto periodístico*. Available at: <http://knightcenter.utexas.edu/es/blog/hawaii-aprueba-extension-de-dos-anos-ley-que-proteje-el-secreto-periodistico>

³⁷⁹ Judicial Watch. March 2, 2011. *Judicial Watch Obtains Bush Defense Department Documents Detailing Terrorist Threat Posed By Guantanamo Detainees*. Available at: <http://www.judicialwatch.org/news/2011/mar/judicial-watch-obtains-bush-defense-department-documents-detailing-terrorist-threat-po>; Reporters Without Borders. March 4, 2011. *NGO gains access to Guantanamo documents but double standard still prevails*. Available at: http://en.rsf.org/united-states-ngo-gains-access-to-guantanamo-04-03-2011_39675.html

³⁸⁰ Indictment. *U.S. v. Sterling*. Case No. 1:10CR485 (LMB). December 22, 2010. Available at: <http://cryptome.org/0003/sterling/sterling-001.pdf>; Cf. Defendant's Opposition to Government's Motion for Pretrial Detention. *U.S. v. Sterling*. Case No. 1:10CR485 (LMB). January 21, 2011. Available at: http://www.politico.com/static/PPM195_sterlingrsmotn.html; Reuters. January 6, 2011. *Ex CIA officer charged with giving reporter secrets*. Available at: <http://www.reuters.com/article/2011/01/07/us-usa-security-cia-idUSTRE7055S520110107>; ABC. January 7, 2011. *Arrestan a ex agente de CIA acusado de divulgar documentos secretos*. Available at <http://www.abc.es/agencias/noticia.asp?noticia=645722>

³⁸¹ Reporters Without Borders. May 26, 2011. *Department of Justice wants reporter to betray source but spares one of its own whistle-blowers*. Available at: <http://en.rsf.org/united-states-department-of-justice-wants-26-05>

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journalist, who had included information from an anonymous source in his book *State of War*, invoked his right to maintain the confidentiality of the source under the First Amendment of the Constitution. In July, the judge ruled that Risen's testimony was covered by reporter's privilege. According to the information received, on October 19th, the Department of Justice appealed the disposition of the subpoena to a federal court of appeals, which will decide whether to uphold the protection of Risen's privileged sources.³⁸²

242. In December 2010, the press reported, based in part on statements by the U.S. Attorney General, that the Justice Department was investigating the publication of classified government information by the organization WikiLeaks with a view to prosecuting its founder, Julian Assange.³⁸³ In addition, on December 14, 2010, the Department of Justice obtained a court order against the parent company of the social networking site Twitter directing it to turn over information on WikiLeaks account users and the accounts of individuals allegedly associated with that group, including founder Julian Assange and Icelandic parliamentary representative Birgitta Jónsdóttir. The requested information included: subscriber names or user names; email, residential, and business addresses; connection records and duration times; data transfer volume; source and destination of the communication; and sender and receiver Internet protocol (IP) addresses, as well as telephone numbers and means of payment.³⁸⁴ The objections filed by the affected parties were denied by a federal court on November 10, 2011.³⁸⁵

243. Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

244. As the IACHR and UN Special Rapporteurs have already indicated,³⁸⁶ public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and

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[2011,40357.html](http://www.nytimes.com/2011/05/25/us/25subpoena.html); New York Times. May 24, 2011. *Subpoena Issued to Writer in C.I.A.-Iran-Leak Case*. Available at: <http://www.nytimes.com/2011/05/25/us/25subpoena.html>

³⁸² Memorandum Opinion. *United States v. Sterling*. Case 1:10cr485 (LMB). July 29, 2011. Available at: <http://www.documentcloud.org/documents/229733-judge-leonie-brinkemas-ruling-quashing-subpoena.html>; Committee to Protect Journalists (CPJ). October 25, 2011. *Appeal against Risen keeps source protection in focus*. Available at: <http://www.cpj.org/blog/2011/10/appeal-against-risen-keeps-source-protection-in-fo.php>; Politico. October 19, 2011. *Department of Justice still wants New York Times reporter's sources*. Available at: <http://www.politico.com/news/stories/1011/66424.html>

³⁸³ New York Times. December 1, 2011. *U.S. Weighs Prosecution of WikiLeaks Founder, but Legal Scholars Warn of Steep Hurdles*. Available at: <http://www.nytimes.com/2010/12/02/world/02legal.html>; New York Times. December 7, 2011. *U.S. Prosecutors Study WikiLeaks Prosecution*. Available at: <http://www.nytimes.com/2010/12/08/world/08leak.html>

³⁸⁴ United States Department of Justice. December 14, 2010. MISC. NO. 10GJ3793. Available at: <http://www.webcitation.org/5vfUQIMUS>; El País. August 1, 2011. *EEUU pide a Twitter información de las cuentas de colaboradores de WikiLeaks*. Available at: http://www.elpais.com/articulo/internacional/EE/UU/pide/Twitter/informacion/cuentas/colaboradores/Wikileaks/elpeuint/20110108elpeuint_10/Tes

³⁸⁵ See Memorandum Opinion. In re Application of the United States of America for an order Pursuant to 18 U.S.C. § 2703(d). U.S. District Court for the Eastern District of Virginia. Case 1:11-dm-00003-TCB-LO Doc. 85. Filed 11/10/11. Available at: http://www.wired.com/images/blogs/threatlevel/2011/11/twitter_wikileaks_ruling.pdf

³⁸⁶ *Joint Statement on Wikileaks of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR Special Rapporteur for Freedom of Expression*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&IID=1>

civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. Government "whistleblowers" releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.³⁸⁷

245. With regard to the disclosure of classified information that could affect legally protected rights or interests, the IACHR and UN Special Rapporteurs maintained in the same Joint Statement that ethical codes for journalists should provide for an evaluation of the public interest in obtaining such information. Self-regulatory mechanisms for journalists have played an important role in fostering greater awareness about how to report on and address difficult and controversial subjects. Special journalistic responsibility is called for when reporting information from confidential sources that may affect valuable interests such as fundamental rights or the security of other persons. Such codes can also provide useful guidance for new forms of communication and for new media organizations, which should likewise voluntarily adopt ethical best practices to ensure that the information made available is accurate, fairly presented and does not cause substantial harm to legally protected interests such as human rights.³⁸⁸

246. Finally, the Office of the Special Rapporteur recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

C. The right to access to information

247. The Office of the Special Rapporteur learned of an order issued on July 5 directing *The Daily*, a digital newspaper, to take down a video of the deposition of Tony Hayward, CEO of British Petroleum, relating to the oil spill in the Gulf of Mexico in 2010. *The Daily* refused to comply with the order, citing the "there is tremendous public interest in the complete disclosure of all of the surrounding facts" with respect to the oil spill. The judge handling the case lifted the order on July 11.³⁸⁹

248. The Office of the Special Rapporteur received information regarding a federal judge's refusal, on August 1, to hold the Central Intelligence Agency (CIA) in contempt of court for

³⁸⁷ *Joint Statement on Wikileaks of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR Special Rapporteur for Freedom of Expression*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&IID=1>

³⁸⁸ *Joint Statement on Wikileaks of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR Special Rapporteur for Freedom of Expression*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&IID=1>

³⁸⁹ Knight Center. July 11, 2011. *Periódico digital estadounidense rechaza orden judicial de retirar video con testimonio de director de BP*. Available at: <http://knightcenter.utexas.edu/es/blog/periodico-digital-estadounidense-rechaza-orden-judicial-de-retirar-video-con-testimonio-de-dire>; The Daily. July 7, 2011. *The Video BP Doesn't Want You to See: The Daily refuses judge's order to censor CEO grilling*. Available at: <http://www.thedaily.com/page/2011/07/07/070711-news-daily-bp-1-4/>; Washington Post. July 7, 2011. *The Daily refuses to take down BP CEO Tony Hayward's deposition video, despite judge's order*. Available at: http://www.washingtonpost.com/blogs/blogpost/post/the-daily-refuses-to-take-down-bp-ceo-tony-haywards-deposition-video-despite-judges-order/2011/07/07/gIQAQTQA2H_blog.html; The Louisiana Record. July 18, 2011. *Magistrate vacates order that called on YouTube and The Daily to pull Hayward clips*. Available at: <http://www.louisianarecord.com/news/236956-magistrate-vacates-order-that-called-on-youtube-and-the-daily-to-pull-hayward-clips>

destroying approximately 92 videotapes of detainee interrogations, including tapes that allegedly depicted prisoners being waterboarded. The ruling, by a judge from the US district court for the Southern District of New York, arose out of a 2007 motion by the ACLU for the CIA to produce the videotapes. According to the information received, the judge requested that the CIA publish its document-destruction policies and ordered the CIA to pay attorneys' fees.³⁹⁰

249. Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

D. Assaults and arrests of journalists covering public protests

250. The Office of the Special Rapporteur received information concerning restrictions on freedom of expression in the context of a series of social protests beginning last September 17. Members of a political movement called "Occupy Wall Street" began to camp in Zuccotti Park, a private park in New York City, on September 17 in protest of political and economic policies. When on September 24 protesters marched, allegedly without a permit,³⁹¹ videos circulated on news outlets and social media sites showing police using physical force on various protesters.³⁹² According to reports, those detained included at least one professional journalist, as well as numerous citizen journalists and passersby who attempted to document the protests and arrests with audio and video recording devices.³⁹³ Subsequently, similar protests to "Occupy Wall Street" occurred in other cities, resulting in significant numbers of arrests within the framework of social protests.³⁹⁴

251. With regard to those protests, the Office of the Special Rapporteur was informed of arrests and assaults on some journalists and media workers. According to the information received,

³⁹⁰ Reporters Without Borders. August 5, 2011. *Judge refuses to hold CIA in contempt of court for destroying torture tapes*. Available at: http://en.rsf.org/united-states-judge-refuses-to-hold-cia-in-05-08-2011_40758.html; ACLU. August 1, 2011. *Court Sanctions CIA to Pay Fees over Torture Tapes*. Available at: <http://www.aclu.org/blog/national-security/court-sanctions-cia-pay-fees-over-torture-tapes>; Court motions and procedural documents. Available at: <http://www.aclu.org/national-security/aclu-v-department-defense>; Reporters Without Borders. March 5, 2009. *CIA Destroyed 92 Interrogation Videos*. Available at: http://en.rsf.org/united-states-cia-destroyed-92-interrogation-05-03-2009_30486.html

³⁹¹ See ABC News. September 24, 2011. *Occupy Wall Street Movement Reports 80 Arrested Today in Protests*. Available at: <http://abcnews.go.com/blogs/headlines/2011/09/occupy-wall-street-movement-reports-80-arrested-today-in-protests/>; NY Daily News. September 25, 2011. *Wall Street protesters cuffed, pepper-sprayed during 'inequality' march*. Available at: http://www.nydailynews.com/news/national/2011/09/24/2011-09-24_nasty_wall_streetfight_protesters_cuffed_peppersprayed_during_inequality_march.html; NY Times. September 26, 2011. *Wall Street Demonstrations Test Police Trained for Bigger Threats*. Available at: <http://www.nytimes.com/2011/09/27/nyregion/wall-street-demonstrations-test-police-trained-for-bigger-threats.html>

³⁹² NY Daily News. September 25, 2011. *Wall Street protesters cuffed, pepper-sprayed during 'inequality' march*. Available at: http://www.nydailynews.com/news/national/2011/09/24/2011-09-24_nasty_wall_streetfight_protesters_cuffed_peppersprayed_during_inequality_march.html; ABC News. September 24, 2011. *Occupy Wall Street Movement Reports 80 Arrested Today in Protests*. Available at: <http://abcnews.go.com/blogs/headlines/2011/09/occupy-wall-street-movement-reports-80-arrested-today-in-protests/>. See also: Occupy Wall Street. Available at: <https://occupywallst.org/>; Adbusters. *Occupy Wall Street*. Available at: <http://www.adbusters.org/campaigns/occupywallstreet>

³⁹³ WNET. September 27, 2011. *Observations of a Jailed Journalist*. Available at: <http://www.thirteen.org/metrofocus/news/2011/09/observations-of-a-jailed-journalist/>

³⁹⁴ See generally, Committee to Protect Journalists (CPJ). *At Occupy protests, U.S. journalists arrested, assaulted*. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>; Wall Street Journal. November 18, 2011. *Protesters Clash with Police: Several Hundred Arrested Around U.S. on Movement's Two-Month Anniversary*. Available at: <http://online.wsj.com/article/SB10001424052970203699404577043970206021872.html>

at least three journalists have reportedly been assaulted since this past October by police officers, and two others by people taking part in the demonstrations. In addition, at least a dozen journalists have reportedly been arrested in spite of having identified themselves as reporters.

252. According to reports, journalist Dick Brennan of the *Fox 5* station and his cameraman Roy Isen were assaulted on October 5 in New York City while covering the Occupy Wall Street demonstrations.³⁹⁵

253. The Office of the Special Rapporteur learned of alleged attacks against Scott Campbell, an independent journalist, on November 7 in Oakland. According to reports, police officers allegedly shot a rubber bullet at Campbell without any provocation or warning. Campbell disclosed the video that recorded the attack.³⁹⁶

254. Other reports indicate that on October 28, reporter John Huddy of the *Fox 5* station was allegedly assaulted by a protester while covering the Occupy Wall Street demonstration in New York,³⁹⁷ and on November 10, cameraman Randy Davis of station *KGO* was reportedly beaten severely by protesters in Oakland who prevented him from capturing images of a crime that had occurred minutes earlier. The assailants reportedly beat the journalist until other protesters intervened to protect him.³⁹⁸

255. With respect to the arrests, according to the information available, journalist John Farley of station *WNET/Thirteen* blog *MetroFocus*, was detained for 8 hours on September 24 in New York while he was interviewing two youths who had allegedly been assaulted. According to reports, the police detained him because he did not have the press credentials given out by the police themselves.³⁹⁹ Kristen Gwynne, a journalist from *Altnet*, was arrested on October 1 on the

³⁹⁵ Committee to Protect Journalists (CPJ). *At Occupy protests, U.S. journalists arrested, assaulted*. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>; Fox 5. October 11, 2011. *Occupy Wall Street Arrests; Fox 5 Crew and Protesters Hit by Pepper Spray, Batons*. Available at: <http://www.myfoxny.com/dpp/news/occupy-wall-street-protest-broadens-scope-20111005>

³⁹⁶ New York Daily News. November 8, 2011. *Oakland police officer caught on video shooting protester with beanbag*. Available at: <http://www.nydailynews.com/news/national/oakland-police-officer-caught-video-shooting-protester-beanbag-article-1.974171?localLinksEnabled=false>; Mercury News/Oakland Tribune. November 7, 2011. *Experts in police use of force shocked by Oakland video*. Available at: http://www.mercurynews.com/top-stories/ci_19284774; Huffington Post. November 8, 2011. *Scott Campbell Films Police Shooting at Occupy Oakland: Video Sparks National Outrage* (Video). Available at: http://www.huffingtonpost.com/2011/11/08/scott-campbell-films-police-shooting_n_1082393.html; CPJ. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

³⁹⁷ Fox 5. October 28, 2011. *Occupy Wall Street Protester Threatens Fox 5 News Reporter*. Available at: <http://www.myfoxny.com/dpp/news/fox-5-news-reporter-assaulted-at-ows-20111028-KC>; Committee to Protect Journalists (CPJ). *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

³⁹⁸ Media Bistro/ABC. November 11, 2011. *Occupy Oakland Protestors Attack KGO Cameraman For Shooting Video of Murder Scene*. Available at: http://www.mediabistro.com/tvspy/kgo-cameraman-attacked-while-shooting-murder-scene-at-occupy-oakland_b28970; New York Times/Bay Citizen. November 12, 2011. *Occupy Oakland and News Media Coexist Uneasily*. Available at: <http://www.nytimes.com/2011/11/13/us/occupy-oakland-and-news-media-coexist-uneasily.html>; Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

³⁹⁹ Salon/Metrofocus. September 28, 2011. *Jailed for covering the Wall Street protests*. Available at: http://www.salon.com/2011/09/28/wall_street_protest_arrested/; WNET. September 27, 2011. *Observations of a Jailed Journalist*. Available at: <http://www.thirteen.org/metrofocus/news/2011/09/observations-of-a-jailed-journalist/>; Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>. See also: New York Police Department. *Press Relations: Press Card Application*. Available at: http://www.nyc.gov/html/nypd/html/press_relations/credentials.shtml#eligibility

Brooklyn Bridge in New York after police closed the street and arrested everyone there.⁴⁰⁰ Freelance journalist Natasha Lennard, who was reporting for the *New York Times*, was also arrested and charged with disorderly conduct. The charge was apparently later dismissed in court because she had been acting in her professional capacity as a journalist.⁴⁰¹

256. The Office of the Special Rapporteur also learned of the arrest of Jonathan Meador, of the weekly *Nashville Scene*, on October 29 in Nashville, Tennessee, as he was recording video of the forced removal of the demonstrators from the “Occupy Nashville” group. According to the information received, Meador told authorities repeatedly that he was a journalist.⁴⁰² Information was also received that student journalist Malina Chavez-Shannon of Middle Tennessee State University was reportedly arrested while photographing the arrest of protesters. According to reports, the judge in her case dropped and expunged all the criminal charges filed against the protesters.⁴⁰³ The arrests had reportedly been the result of new restrictions on the right to demonstrate in Tennessee. Those restrictions were challenged and are reportedly no longer being enforced following the issuance of a temporary restraining order by a federal judge.⁴⁰⁴

257. The Office of the Special Rapporteur learned of the arrest of Ian Graham, a photographer from *RVA Magazine*, on October 31 in Richmond. According to reports, the journalist was arrested and charged with “trespassing after having been forbidden to do so,”⁴⁰⁵ after he questioned an order to remain in a designated “press area” while covering the eviction of the

⁴⁰⁰ Alternet. October 1, 2011. *NYPD Mass Arrests of Occupy Wall Street Protesters: Firsthand Account from AlterNet Staffer Trapped on Bridge*. Available at: http://www.alternet.org/newsandviews/article/674824/nypd_mass_arrests_of_occupy_wall_street_protesters%3A_firsthand_account_from_alternet_staffer_trapped_on_bridge/; International Freedom of Expression Exchange (IFEX)/IPI. November 8, 2011. *Journalists arrested while covering Occupy Wall Street protests in multiple cities*. Available at: http://www.ifex.org/united_states/2011/11/08/occupy_arrests/. Cf. Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

⁴⁰¹ New York Times. October 1, 2011. *Police Arrest More Than 700 Protesters on Brooklyn Bridge*. Available at: <http://cityroom.blogs.nytimes.com/2011/10/01/police-arresting-protesters-on-brooklyn-bridge/>; International Freedom of Expression Exchange (IFEX)/IPI. November 8, 2011. *Journalists arrested while covering Occupy Wall Street protests in multiple cities*. Available at: http://www.ifex.org/united_states/2011/11/08/occupy_arrests/; et al.

⁴⁰² Washington Post. October 31, 2011. *Occupy Nashville: federal Judge halts arrests after reporter Jonathan Meador records his own* (Video). Available at: http://www.washingtonpost.com/blogs/blogpost/post/occupy-arrests-reporter-jonathan-meador-records-own-arrest-video/2011/10/31/gIQAgwblZM_blog.html; Nashville Scene. October 29, 2011. *Breaking: Scene Reporter Arrested in Troopers’ Crackdown on Occupy Nashville*. Available at: <http://www.nashvillescene.com/pitw/archives/2011/10/29/breaking-scene-reporter-arrested-in-troopers-crackdown-on-occupy-nashville/>; Nashville Scene. October 29, 2011. *A Scene reporter arrested by the state sees Nashville under occupation – but whose? Can I Go Home Now?* Available at: <http://www.nashvillescene.com/nashville/a-scene-reporter-arrested-by-the-state-sees-nashville-under-occupation-but-whose/Content?oid=2668260>; The Tennessean. October 30, 2011. *No overnight arrests made at Occupy Nashville*. Available at: <http://www.tennessean.com/article/20111030/NEWS01/111030003/No-overnight-arrests-made-Occupy-Nashville>

⁴⁰³ MTSU Sidelines. November 5, 2011. *Photography student arrested at Occupy Nashville*. Available at: <http://www.mtsusidelines.com/photography-student-arrested-at-occupy-nashville-1.2684784>; Nashville City Paper. November 14, 2011. *All charges against Occupy Nashville protesters dropped*. Available at: <http://nashvillecitypaper.com/content/city-news/all-charges-against-occupy-nashville-protesters-dropped>

⁴⁰⁴ The Tennessean. November 1, 2011. *Occupy Nashville arrests end*. Available at: <http://www.tennessean.com/article/20111101/NEWS03/310310047/Occupy-Nashville-arrests-end>; Nashville City Paper. November 14, 2011. *All charges against Occupy Nashville protesters dropped*. Available at: <http://nashvillecitypaper.com/content/city-news/all-charges-against-occupy-nashville-protesters-dropped>; ACLU. October 31, 2011. The pleadings filed before the court by the ACLU are available at: <http://www.aclu-tn.org/pdfs/OccupyNashvilleMotionTRO.pdf>; <http://www.aclu-tn.org/pdfs/OccupyNashvilleComplaint.pdf>

⁴⁰⁵ See § 18.1-119 of the Virginia Criminal Code. Available at: <http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+18.2-119>

“Occupy Richmond” group. The journalist was ordered to appear in court and, through his attorneys, has challenged the constitutionality of his arrest.⁴⁰⁶

258. The Office of the Special Rapporteur was also informed that Susie Cagle, a freelance reporter and cartoonist for *Alternet*, *Truthout* and *Citizen Radio*, was arrested and charged with “presence at the scene of a riot” on November 3 in Oakland. According to reports, Cagle identified herself as a journalist at the time of her arrest, but was held for some 15 hours and ordered to appear at a hearing at the end of November.⁴⁰⁷

259. According to the information received, *Milwaukee Journal Sentinel* photographer Kristyna Wentz-Graff was reportedly arrested on November 2 in Milwaukee while photographing a demonstration near the University of Wisconsin, with her official press credential visible. The journalist was released, presumably without charges.⁴⁰⁸

260. The Office of the Special Rapporteur was informed that during the night of November 15, 2011, at least seven journalists were arrested while covering the eviction of protesters from Zuccotti Park in New York, even though they had official credentials. The journalists in question were: Julie Walker of *NPR*;⁴⁰⁹ Patrick Hedlund and Paul Lomax of *DNAinfo.com*;⁴¹⁰ Doug

⁴⁰⁶ Augusta Free Press. November 4, 2011. *ACLU to represent magazine photographer arrested at Occupy Richmond rally*. Available at: <http://augustafreepress.com/2011/11/04/aclu-to-represent-magazine-photographer-arrested-at-occupy-richmond-rally/>; Style Weekly. October 31, 2011. *Photographer Arrested: RVA Magazine contributor charged with trespassing while taking photos of police raid on Occupy Richmond encampment*. Available at: <http://www.styleweekly.com/TheReportersNotebook/archives/2011/10/31/photographer-arrested>; ACLU Virginia. November 4, 2011. *ACLU To Represent Press Photographer Arrested at “Occupy” Demonstration in Richmond*. Available at: <http://acluva.org/8154/aclu-to-represent-press-photographer-arrested-at-%e2%80%9coccupy%e2%80%9d-demonstration-in-richmond/>; RVA Magazine. November 1, 2011. *Trespassing in public: RVA Police break up the occupation and arrest our photographer*. Available at: <http://rvamag.com/articles/full/12881/trespassing-in-public-rva-police-break-up-the-occupation-and-arrest-our-photogra>

⁴⁰⁷ Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>; Alternet. November 6, 2011. *Police State in Oakland? One Reporter’s Arrest Contradicts Official Story*. Available at: <http://www.alternet.org/story/152990/police-state-in-oakland-one-reporter-s-arrest-contradicts-official-story/?page=entire>; Comics Beat. November 4, 2011. *Cartoonists and the law: Susie Cagle arrested, charged with misdemeanor*. Available at: <http://www.comicsbeat.com/2011/11/04/cartoonists-and-the-law-susie-cagle-arrested-charged-with-misdemeanor/>

⁴⁰⁸ Milwaukee Journal Sentinel. November 4, 2011. *Mayor says it’s ‘very clear’ arrested photographer was journalist*. Available at: <http://www.jsonline.com/news/milwaukee/flynn-seeks-meeting-with-media-after-arrests-133183378.html>; Committee to Protect Journalists (CPJ). November 11, 2011. *At Occupy protests, U.S. journalists arrested, assaulted*. November 11, 2011. Available at: <http://cpj.org/blog/2011/11/at-occupy-protests-us-journalists-arrested-assault.php>

⁴⁰⁹ Walker was reportedly charged with “disturbing the peace.” *NPR*. November 15, 2011. *New York Police Clear Occupy Wall Street Protesters from Park*. Available at: <http://www.npr.org/blogs/thetwo-way/2011/11/15/142336656/new-york-police-clear-occupy-wall-street-protesters-from-park?print=1SafariHTML%5CShell%5COpen%5CCommand>; New York Daily News. November 16, 2011. *Showdown at Zuccotti Park: The NYPD’s raid on Occupy Wall Street NYC Live*. Available at: http://live.nydailynews.com/Event/Showdown_at_Zuccotti_Park_The_NYPDs_raid_on_Occupy_Wall_Street_NYC; Washington Post/Associated Press. November 15, 2011. *Journalists detained while covering Occupy Wall Street protests; several arrested, handcuffed*. Available at: http://www.washingtonpost.com/national/journalists-detained-while-covering-occupy-wall-street-protests-in-manhattan/2011/11/15/gIQAUvb1ON_story.html; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>; Reporters Without Borders. November 16, 2011. *Occupy Wall Street: Bloqueos a la prensa y nuevos arrestos durante la evacuación de un campamento en Nueva York*. Available at: <http://es.rsf.org/estados-unidos-reunion-ilegal-mala-conducta-los-09-11-2011,41371.html>

⁴¹⁰ According to reports, Hedlund was given a notice to appear (“desk appearance ticket”) at a hearing. *DNAinfo.com*. November 16, 2011. *DNAinfo.com Journalists Arrested While Covering OWS Police Raids*. Available at: <http://www.dnainfo.com/20111115/downtown/dnainfo-journalists-arrested-while-covering-ows-police-raids>; New York Observer. November 15, 2011. *Occupy Wall Street’s Diaspora Day, 3PM Update: Reporter Arrest Tally Adds Up As Court Ruling is Awaited*. Available at: <http://www.observer.com/2011/11/occupy-wall-streets-diaspora-day-3pm-update-reporter-arrest-tally-adds-up-as-court-ruling-is-awaited/>; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists*

Higginbotham, freelance cameraman for *TV New Zealand*;⁴¹¹ Jared Malsin of *The Local*;⁴¹² Karen Matthews and Seth Wenig of the *Associated Press*, and Matthew Lysiak of the *New York Daily News*.⁴¹³

261. Some journalists reported having been assaulted or pushed by police.⁴¹⁴ According to reports, the mayor of New York stated at a press conference that the media were prohibited from entering the protest site, in order to “keep the situation from worsening” and “to protect the media.”⁴¹⁵

262. The American Declaration of the Rights and Duties of Man, the Declaration of Principles on Freedom of Expression, and the First Amendment to the Constitution of the United States provide broad protection for the exercise of freedom of expression. The protection and guarantee of this right requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as the social protests mentioned in the preceding paragraphs. The disproportionate restrictions on access to the scene of the events, the arrests, and the criminal charges resulting from the performance of professional duties by reporters violate the right to freedom of expression. It is incumbent upon the authorities to reestablish guarantees and ensure full respect for the right to freedom of expression.

263. The Office of the Special Rapporteur received information that in September an agency within the Department of Health and Human Services reportedly removed a database of

...continuation

obstructed from covering OWS protests. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>

⁴¹¹ According to reports, Higginbotham was arrested the following day while covering the protesters’ return to the park. Reporters Without Borders. November 16, 2011. *Occupy Wall Street: Bloqueos a la prensa y nuevos arrestos durante la evacuación de un campamento en Nueva York*. Available at: <http://es.rsf.org/estados-unidos-reunion-ilegal-mala-conducta-los-09-11-2011,41371.html>; TVNZ. November 16, 2011. *Tim Wilson: NYPD arrests my cameraman*. Available at: <http://tvnz.co.nz/world-news/tim-wilson-nypd-arrests-my-cameraman-4542886>

⁴¹² New York Times/The Local. November 15, 2011. Video: *Reporter for The Local Is Arrested During Occupy Wall Street Clearing*. Available at: <http://eastvillage.thelocal.nytimes.com/2011/11/15/video-reporter-for-the-local-is-arrested-during-occupy-wall-street-clearing/>; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>. See also: New York Times. November 15, 2011. *Updates on the Clearing of Zuccotti Park*. Available at: <http://cityroom.blogs.nytimes.com/2011/11/15/updates-on-the-clearing-of-zuccotti-park/?src=tw&tw=cityroom#police-clear-church-owned-lot-arrest-about-2-dozen>

⁴¹³ Matthews, Wenig and Lysiak were reportedly released and their criminal charges were dismissed. NPR. November 15, 2011. *Journalists Detained at NYC Occupy Protests*. Available at: <http://www.npr.org/templates/story/story.php?storyId=142350228>; Wall Street Journal. November 15, 2011. *Journalists detained at NYC Occupy protests*. Available at: <http://online.wsj.com/article/AP7788a68e595d4722950196f35c6d4e5b.html>; Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>

⁴¹⁴ Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>; Reporters Without Borders. November 16, 2011. *Occupy Wall Street: Bloqueos a la prensa y nuevos arrestos durante la evacuación de un campamento en Nueva York*. Available at: <http://es.rsf.org/estados-unidos-reunion-ilegal-mala-conducta-los-09-11-2011,41371.html>; NBC New York. November 16, 2011. Video: *Media Pushed Back from Occupy Wall Street Raid*. Available at: <http://www.nbcnewyork.com/news/local/Media-Blackout-Occupy-Wall-Street-Raid-Protest-Press-133879523.html>; New York Times. November 15, 2011. *Reporters Say Police Denied Access to Protest Site*. Available at: <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>

⁴¹⁵ Committee to Protect Journalists (CPJ). November 16, 2011. *Journalists obstructed from covering OWS protests*. Available at: <http://cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>; Wall Street Journal. November 15, 2011. *Journalists detained at NYC Occupy protests*. Available at: <http://online.wsj.com/article/AP7788a68e595d4722950196f35c6d4e5b.html>

medical malpractice sanctions from its website. According to the information received, *Kansas City Star* newspaper reporter Alan Bavley used the database to write about the alleged malpractice of a neurosurgeon. He subsequently received a letter, dated September 1, from the Health Resources and Services Administration warning him that he could be fined up to \$11,000 for violating confidentiality. The Administration also shut down the database, alleging the need to protect the confidentiality of the information contained therein. According to the reports, the federal government reopened public access to the database on November 9, but made its use subject to new restrictions. The information cannot be used to identify doctors or entities; individuals must return, erase, or destroy copies of the information requested of the Administration; and the information may not be disclosed to third parties unless it is part of a strictly statistical analysis.⁴¹⁶

264. The Office of the Special Rapporteur learned of the March 2 judgment of the United States Supreme Court in the *Snyder v. Phelps* case, which held that the right to freedom of expression provided for in the Constitution protects the protests of a religious group opposed to homosexuality near the funerals of soldiers fallen in combat. In the Court's opinion, these protests are matters of public interest and are protected by the freedom of expression enshrined in the First Amendment of the Constitution.⁴¹⁷ According to the Court, "[freedom of] [s]peech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. That choice requires that we shield Westboro [Baptist Church] from tort liability for its picketing in this case."⁴¹⁸

⁴¹⁶ Knight Center. September 25, 2011. *Acusan a gobierno de Estados Unidos de intimidar a reportero y eliminar datos de negligencias médicas*. Available at: <http://knightcenter.utexas.edu/es/blog/acusan-gobierno-de-estados-unidos-de-intimidar-reportero-y-eliminar-datos-de-negligencias-medic>; New York Times. September 15, 2011. *Withdrawal of Database on Doctors Is Protested*. Available at: http://www.nytimes.com/2011/09/16/health/16doctor.html?_r=1; MSNBC. November 9, 2011. *Feds reopen malpractice database, with caveats*. Available at: <http://www.msnbc.msn.com/id/45229861/ns/health-health-care/t/feds-reopen-malpractice-database-caveats/>; Kansas City Star. November 10, 2011. *After protests, national doctor database reopens – with a catch*. Available at: <http://www.kansascity.com/2011/11/09/3257202/doctor-database-reopens-with-a.html>. See also: National Practitioner Data Bank. November 9, 2011. *Statement by HRSA Administrator Mary K. Wakefield, Ph.D., R.N. on the National Practitioner Data Bank Public Use File*. Available at: <http://www.npdb-hipdb.hrsa.gov/resources/publicDataStatement.jsp>

⁴¹⁷ According to the information received, the case arose based on the pickets that the Westboro Baptist Church of Topeka, Kansas has organized over the past 20 years to express their belief that God hates the United States for its tolerance of homosexuality. According to reports, the members of the congregation went to the funeral of a soldier fallen in combat, at a distance of some 300 meters, in a public place, peacefully and under police surveillance. They reportedly sang religious hymns and displayed signs with messages such as, "Thank God for Dead Soldiers," "You're Going to Hell," "God Hates You," and "Thank God for IEDs." The specific case arose from a civil suit filed by Albert Snyder, the father of the fallen soldier, against Pastor Fred Phelps, his daughters, and the Westboro Baptist Church. Fred Phelps and six other people had traveled to Maryland to attend the funeral of Matthew Snyder, son of Albert Snyder, who was killed in Iraq in March of 2006. The members of the congregation notified the church that they were arriving, positioned themselves to protest in a public place 300 meters from the church, and complied with police instructions. Albert Snyder sued them for defamation and intentional infliction of emotional distress, among other claims. A jury in the United States District Court for the District of Maryland agreed with Snyder and awarded him a total of \$2.9 million in compensatory damages and \$8 million in punitive damages. The District Court reduced the amount of punitive damages to \$2.1 million, but left the rest of the verdict intact. Subsequently, a Court of Appeals reversed the judgment, holding that the religious congregation's speech was protected by the First Amendment of the United States Constitution. That position was later affirmed by the Supreme Court. United States Supreme Court. March 2, 2011. *Snyder v. Phelps*. 131 S. Ct. 1207 (2011). Available at: <http://www.supremecourt.gov/opinions/10pdf/09-751.pdf>. See Time. March 3, 2011. *Why the Supreme Court ruled for Westboro*. Available at: <http://www.time.com/time/nation/article/0,8599,2056613,00.html>

⁴¹⁸ United States Supreme Court. March 2, 2011. *Snyder v. Phelps*. 131 S. Ct. 1207, 1220 (2011). Available at: <http://www.supremecourt.gov/opinions/10pdf/09-751.pdf>. See Time. March 3, 2011. *Why the Supreme Court ruled for Westboro*. Available at: <http://www.time.com/time/nation/article/0,8599,2056613,00.html>

12. Guatemala

265. The IACHR was pleased to learn that the State and civil society organizations agree on the need to protect, consolidate, and reinforce the Historical Archives of the National Police, and that they share the aspiration to turn the National Police Historical Archives Recovery Project into a state project. This evidences the government's willingness to guarantee the right to access to information. According to the information received, the Police Archives—discovered by chance in 2005—provide a record of the activities of the National Police of Guatemala over 15 years, between 1982 and 1997. They contain some 80 million pages, or 7,900 linear meters of documents. The work of preserving and systematizing the information contained therein has provided useful support to 124 judicial searches for persons who disappeared during the internal armed conflict (1960-1996). It has made it possible to put together 1260 investigation files relating to possible human rights violations, and to build 166 specific cases. The Police Archives have proven to have evidentiary value in the court cases that have resulted in convictions against the direct perpetrators of gross human rights violations. The IACHR notes the concern of the State and of civil society about the need to strengthen the National Police Historical Archives Recovery Project legally and institutionally. This is necessary to ensure its financial sustainability, the opportunity for any person to access the information preserved therein, the technical capacity of the personnel in charge of the project, and the proper preservation and systemization of the stored information. It will thus be possible to know the historical truth, establish the facts surrounding human rights violations, and support court cases that make it possible to serve justice, make victims whole, and take measures to prevent the repetition of such acts.⁴¹⁹

266. The Office of the Special Rapporteur condemns the crime committed against journalist Yensi Ordóñez, who was found murdered on May 19 in the town of Nueva Concepción, in the department of Escuintla. According to available information, Yensi Ordóñez's body was found inside her vehicle with stab wounds to her chest and neck. The journalist had apparently received threats from unknown sources because of her reporting. Reports also indicate that she had been the victim of extortion. The journalist, who was 24 years old, worked with the local *Canal 14* news channel, where she also worked as the host of musical and variety shows. In addition, Ordóñez was a teacher at a grade school in the town of El Reparo, in Nueva Concepción. The Office of the Special Rapporteur urges the Guatemalan authorities to investigate the motive for the murder, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim's relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society's right to freedom of expression.⁴²⁰

267. According to the ninth principle of the IACHR's Declaration of Principles on Freedom of Expression, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

⁴¹⁹ See, Hearing on the protection and guarantee of access to the Historical Archives of the Guatemalan National Police, held before the IACHR on October 24, 2011, during the 143rd Period of Sessions.

⁴²⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 24, 2011. Press Release R48/11. *Office of Special Rapporteur Condemns Murder of Journalist in Guatemala*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=846&IID=2>; Committee to Protect Journalists (CPJ). May 20, 2011. *Periodista de televisión hallado muerto en Guatemala*. Available at: <http://cpj.org/es/2011/05/periodista-de-television-hallado-muerto-en-guatemala.php>; EFE News Service. May 20, 2011. *Localizan asesinado en la costa a periodista guatemalteco*. Available at: <http://www.adn.es/internacional/20110520/NWS-0014-Localizan-guatemalteco-periodista-asesinado-costa.html>

268. The Office of the Special Rapporteur received information concerning the persistence of assaults and threats against journalists in Guatemala during 2011. According to the information received, organizations advocating human rights and freedom of expression documented at least 15 acts involving attempts on the lives and personal safety of media workers during the first half of the year. Eleven of the reported assaults reportedly took place outside the capital. In 2010, 10 assaults were documented during the entire year.⁴²¹

269. The Office of the Special Rapporteur observes with concern the threats received by media outlets from alleged drug trafficking gangs. On December 27, 2010, individuals who identified themselves as members of the criminal group “Los Zetas” reportedly delivered a message addressed to President Álvaro Colom to three stations in Cobán, in Alta Verapaz. They demanded that it be broadcast within an hour, warning that otherwise they would burn down the stations and kill their relatives of the station employees. The incident occurred in the context of a government offensive against organized crime.⁴²² Subsequently, on May 21, 2011, police detained three subjects who were attempting to hang several banners in the city of Quetzaltenango. The banners contained messages to the media, telling them to stop publishing articles about events related to drug trafficking. They also warned the press to tone it down: “before the war is with you. Anyone who informs is not a traitor, sincerely, Z-200.” The arrest of the subjects and the seizure of the banners took place days following the massacre of 29 peasant farmers in the department of Petén on May 15.⁴²³

270. Journalist Óscar de León, a correspondent for the television news program *Guatevisión* in the department of Quetzaltenango, was reportedly threatened and harassed on several occasions at the beginning of 2011. According to reports, de León began to receive threatening phone calls and text messages on January 13, after receiving an anonymous briefcase containing complaints against a local police authority and then trying to confirm them. On January 29, unknown persons reportedly fired shots at his vehicle on three occasions. Although the journalist did not make the investigation public, its content leaked and became public knowledge. The authority referred to in the accusation filed a complaint alleging defamation against León.⁴²⁴

⁴²¹ Cerigua. July 2011. *Estado de situación de la libertad de expresión en Guatemala*. First Half of 2011. Available at: http://www.fileden.com/files/2008/2/26/1782822/estado_situacion_libertad_expresion_2011_primer_semestre.pdf; Cerigua. September 13, 2011. *Cerigua presenta informe de agresiones contra periodistas, en conjunto con PDH*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=4764:cerigua-presenta-informe-de-agresiones-contra-periodistas-en-conjunto-con-pdh-&catid=48:libertad-de-expresion&Itemid=10; Prensa Libre. September 14, 2011. *El eslabón más débil*. Available at: http://www.prensalibre.com/opinion/eslabon-debil_0_554344587.html

⁴²² El Periódico. December 29, 2010. *Supuestos “Zetas” amenazan con ataques y hablan de corrupción*. Available at: <http://www.elperiodico.com.gt/es/20101229/pais/187343>; Cerigua. May 21, 2011. *Supuestos Zetas dejan mensajes intimidantes en mantas a la prensa*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2850:supuestos-zetas-dejan-mensajes-intimidantes-en-mantas-a-la-prensa-&catid=48:libertad-de-expresion&Itemid=10

⁴²³ Siglo XXI. May 21, 2011. *Detienen a 3 zetas cuando colocaban mantas en Quetzaltenango*. Available at: <http://www.s21.com.gt/nacionales/2011/05/21/detienen-3-zetas-cuando-colocaban-mantas-quetzaltenango>; Knight Center for Journalism. May 26, 2011. *Supuestos narcotraficantes mexicanos amenazan a la Prensa de Guatemala a través de mensajes en mantas*. Available at: <http://knightcenter.utexas.edu/es/blog/supuestos-narcotraficantes-mexicanos-amenazan-la-prensa-en-guatemala-traves-de-mensajes-en-mant>; Cerigua. May 21, 2011. *Supuestos Zetas dejan mensajes intimidantes en mantas a la prensa*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2850:supuestos-zetas-dejan-mensajes-intimidantes-en-mantas-a-la-prensa-&catid=48:libertad-de-expresion&Itemid=10

⁴²⁴ Cerigua. February 7, 2011. *Periodista recibe amenazas, su hermano sufre atentado*. Available at: http://www.ifex.org/guatemala/2011/02/07/de_leon_threats/es/; Committee to Protect Journalists (CPJ). February 9, 2011. *Reportero guatemalteco amenazado tras investigar corrupción*. Available at: <http://www.cpj.org/es/2011/02/reportero-guatemalteco-amenazado-tras-investigar-c.php>

271. In other reported cases, a member of the Public Prosecutor's Office allegedly prevented cameramen Jenner Barrios, of *Noticias del Valle*, and Byron Castañón, of Canal 22 from doing their jobs and threatened to jail them while they were covering a raid on an underground bar in San Pedro Sacatepéquez, in the department of San Marcos, in mid-February.⁴²⁵ In the town of Retalhuleu, the director of the newspaper *El Defensor*, Carlos Salgado, complained of having received several threats after publishing news critical of the local government.⁴²⁶ Also in Retalhuleu, *Guatevisión* TV correspondent Jorge Tizol was reportedly threatened on his Facebook page days after releasing, on April 12, a video in which three men were beating a driver who refused to buy a product they were selling on the street.⁴²⁷ On February 17, agents from the Criminal Investigations Service (SIC) reportedly insulted and detained *Telediario* correspondent Rolando Hernández Castejón in Chiquimula for 40 minutes while he was reporting on a police operation.⁴²⁸

272. On April 9, Vasni Vásquez, a journalist from the program "Q'rollo", which is broadcast on the Internet, was reportedly arrested for his alleged involvement in a kidnapping. The reporter had gone to the place where the police were securing the victim's release, and reportedly identified himself with his credential from the Chiquimula Journalists' Network (RCS). Nevertheless, he was arrested with four other suspects, who reportedly denied that the journalist had been an accomplice to the kidnapping. On May 18, 2011, he was placed in pretrial custody and charged with "kidnapping, collusion and conspiracy." Since then, the date of his hearing has been postponed twice, and his attorneys have reportedly filed several requests to present exculpatory evidence. On June 9, 2011, the Chiquimula Court apparently reported that Vásquez would remain in pretrial detention and be prosecuted for kidnapping.⁴²⁹ Nevertheless, on October 19, the Appeals Chamber of Zacapa reportedly released the journalist for lack of evidence against him.⁴³⁰

⁴²⁵ Cerigua. March 11, 2006. *Autoridades amenazaron e intimidaron a periodistas*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=1761:autoridades-amenazaron-e-intimidaron-a-periodistas-&catid=48:libertad-de-expresion&Itemid=10; El Periódico. May 4, 2011. *Seis periodistas amenazados durante 2011*. Available at: <http://www.elperiodico.com.gt/es/20110504/pais/194918/>

⁴²⁶ Cerigua. April 25, 2011. *Periodista retalteco denunció violación a la libertad de prensa*. Available at: http://cerigua.org/la1520/index.php/geografica/68retalhuleu/index.php?option=com_content&view=article&id=2393:periodista-retalteco-denuncio-violacion-a-la-libertad-de-prensa&catid=48:libertad-de-expresion&Itemid=10; El Periódico. May 4, 2011. *Seis periodistas amenazados durante 2011*. Available at: <http://www.elperiodico.com.gt/es/20110504/pais/194918/>

⁴²⁷ The message against the journalist (posted to his page on the social networking site Facebook) warned him not to leave the house, because if he did, he would get a beating "until you're unconscious, if you even come back." *Noticias.Com*. April 18, 2011. *Amenazan por Facebook a periodista que cubrió captura de supuestos universitarios*. Available at: <http://noticias.com.gt/nacionales/20110418-amenazan-facebook-periodista-captura-universitarios.html>; Cerigua. April 15, 2011. *Amenazan a periodista en Retalhuleu*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2365:amenazan-a-periodista-en-retalhuleu&catid=48:libertad-de-expresion&Itemid=10; Regina Pérez, Cerigua. "Intimidaciones y autocensura obstaculizan libertad de prensa en Guatemala". *Vistazo Especial*, May 3, 2011. Year 12 No. 2. 2nd Week of May, 2011. p. 1. Available at: <http://www.cerigua.org/servicios/boletines/vz-021211.pdf>

⁴²⁸ Cerigua. February 21, 2011. *Agentes detienen y maltratan verbalmente a periodista en Chiquimula*. Available at: <http://www.cerigua.org/servicios/diarios/c-210211.pdf>; Cerigua. March 11, 2006. *Autoridades amenazaron e intimidaron a periodistas*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=1761:autoridades-amenazaron-e-intimidaron-a-periodistas-&catid=48:libertad-de-expresion&Itemid=10

⁴²⁹ Reporters Without Borders/International Freedom of Expression Exchange (IFEX). June 14, 2011. *RSF expresa serias dudas sobre acusaciones contra periodista detenido*. Available at: <http://ifex.org/guatemala/2011/06/14/vasni-vasquez/es/>; Crónica Viva. June 13, 2011. *Guatemala: exigen libertad de reportero Vasni Vásquez*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/21534-guatemala-exigen-libertad-de-reportero-vasni-vasquez->

⁴³⁰ Mi Chiquimula. October 20, 2011. *Queda libre, confirma clausura del caso Vasni Vasquez*. Available at: <http://www.michiquimula.com/2011/10/queda-libre-confirma-clausura-del-caso-vasni-vasquez/>

273. Environmental journalist Eduardo Villatoro of the newspaper *La Hora* reportedly began receiving intimidating phone calls on June 2, 2011, following the publication of articles about iron mining on Guatemalan beaches and the construction of a liquid gas storage facility. He reportedly received a death threat in one of the last calls. The unknown individuals allegedly also called the Guatemalan Journalists' Association in order to reiterate the threats, and they linked the threats to the publication of his environmental articles. The journalist reportedly did not file a complaint with the Office of the Public Prosecutor.⁴³¹

274. On July 13, 2011, following the publication of an article on alleged corrupt acts of the municipal government of Mazatenango, *Prensa Libre* correspondent Dánilo López was reportedly harassed and verbally assaulted by the mayor. On August 4, 2011, López and Ángel Ruiz, a correspondent from *Nuestro Diario*, were allegedly intimidated by supporters of the mayor, and threatened by his bodyguards.⁴³²

275. In mid-July 2011, journalists Astrid Blank and Jorge Hernández were reported to have been assaulted by an unidentified person in the La Florida neighborhood of Guatemala City. Blank and Hernández had gone to cover a news story about rumors of alleged vote-buying. At the scene, the unidentified person reportedly requested that they stop recording, and when they asked for his name, he verbally and physically assaulted them and destroyed their camera.⁴³³

276. On July 26, journalists Javier Solís, director of *Tele Noticias* of *Mega Visión Canal 3*, and Manolo Lú, of *Ultra Canal 51*, reported that they had been assaulted by two employees of the presidential program *Mi Familia Progresá* (MIFAPRO) from the town of Santa Cruz Muluá, when they went to request information about the implementation of this program in the town. According to reports, the person in charge of MIFAPRO in the town verbally assaulted the reporters and attempted to hit them, while a second staff member hurled threats at them.⁴³⁴

277. During the first round of the national elections on September 11, a poll worker in the community of Sololá reportedly assaulted Alfonso Guárquez, a *Cerigua* correspondent in that town, as well as *Noti7* correspondent Enrique Pablo de León, when they tried to photograph a polling place

⁴³¹ International Freedom of Expression Exchange (IFEX). June 6, 2011. *Columnista que escribe sobre temas ambientales recibe amenazas*. Available at: http://ifex.org/guatemala/2011/06/06/villatoro_amenaza/es/; Knight Center for Journalism in the Americas. June 7, 2011. *Periodista que escribe sobre medioambiente recibe amenazas telefónicas en Guatemala*. Available at: <http://knightcenter.utexas.edu/es/blog/periodista-que-escribe-sobre-medioambiente-recibe-amenazas-telefonicas-en-guatemala>

⁴³² International Freedom of Expression Exchange (IFEX). August 10, 2011. *Periodistas sufren persecución de alcalde de Mazatenango por publicación sobre corrupción*. Available at: http://www.ifex.org/guatemala/2011/08/10/mazatenango_threats/es/; *Prensa Libre*. August 13, 2011. *Alcalde de Mazate acosa a periodistas*. Available at: http://www.prensalibre.com.gt/suchitepequez/Alcalde-Mazate-acosa-periodistas_0_535146523.html

⁴³³ International Freedom of Expression Exchange (IFEX)/*Cerigua*. July 21, 2011. *Reporteros de televisión sufren agresiones por presunto trabajador del gobierno*. Available at: http://www.ifex.org/guatemala/2011/07/21/guatevision_agresiones/es/; *Periodistas en Español*. July 21, 2011. *Censura en Guatemala: agresiones contra ocho periodistas en el proceso electoral*. Available at: <http://www.periodistas-es.org/medios-de-comunicacion/censura-en-guatemala-agresiones-contra-ocho-periodistas-en-el-proceso-electoral>

⁴³⁴ *Cerigua*. July 26, 2011. *Dos periodistas de Retalhuleu agredidos y amenazados por trabajadores de Mifrapo*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=3951:dos-periodistas-de-retalhuleu-agredidos-y-amenazados-por-trabajadores-de-mifapro&catid=48:libertad-de-expresion&Itemid=10; *La Hora*. July 27, 2011. *Trabajadores de Mifrapo agreden a periodistas*. Available at: <http://www.lahora.com.gt/index.php/nacional/guatemala/departamental/4366-trabajadores-de-mifapro-agreden-a-periodistas>

where some alleged anomalies had been reported by election observers from the University of San Carlos.⁴³⁵

278. On October 27, journalist Lucía Escobar reported that she had received threats following the October 19 publication of a column in *El Periódico* in which she spoke out against a “group of masked men” in the tourist city of Panajachel, called the Security Commission, which was allegedly responsible for violating the freedom and safety of some people. The journalist also identified the authorities who, in her opinion, had defended the masked men or had been indifferent to the events that took place. The threats were reportedly issued on a local television station that was broadcasting a meeting of the Security Commission, at which some of its members made disparaging and stigmatizing remarks against the journalist and reportedly called her “trash” that would have to “end up in the trash.”⁴³⁶

279. According to the ninth principle of the IACHR’s Declaration of Principles on Freedom of Expression, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

280. The Office of the Special Rapporteur notes with concern the appeal from Guatemalan freedom of expression organizations regarding the possible increase in the phenomenon of self-censorship. As evidence of this situation, they cite the fact that in departments where drug trafficking groups are known to operate, information about the problem is scarce. For example, according to the information received, in Alta Verapaz—where the government declared a state of siege in December 2010 due to the presence of the criminal group “Los Zetas”—only 35 articles about drug trafficking were published in the entire year in five newspapers. At the same time, in Chiquimula, where there is reportedly an even greater presence of drug trafficking groups, only five articles were published on the subject in 2010. The Guatemalan organizations theorize that once again there are issues that are not covered or published in Guatemala, and that journalists are again facing the rise of self-censorship because of new censors of freedom of expression, especially coming from the drug trafficking world.⁴³⁷ The Office of the Ombudsman has called the problema of self-censorship among journalists “serious” in light of the activities of organized crime.⁴³⁸

⁴³⁵ Cerigua. September 11, 2011. *Fiscal agrade a periodistas en una mesa de votación*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=4717:fiscal-agrede-a-periodistas-en-una-mesa-de-votacion-en-solola-&catid=87:elecciones&Itemid=10

⁴³⁶ Instituto Prensa y Sociedad (IPYS). October 28, 2011. *Miembros de Comité de Seguridad amenazan a periodista en Guatemala*. Available at: <http://ipys.org/?q=noticia/942>; *El Periódico*. October 29, 2011. *Ataque a la libertad de expresión en Panajachel*. Available at: <http://www.elperiodico.com.gt/es/20111029/opinion/202881/>; *El Periódico*. October 19, 2011. *De cuervos, ojos y demonios*. Available at: <http://www.elperiodico.com.gt/es/20111019/lacolumna/202450/>

⁴³⁷ Regina Pérez, Cerigua. “Intimidaciones y autocensura obstaculizan libertad de prensa en Guatemala.” *Vistazo Especial*. Year 12, No. 2. 2nd week of May, 2011. pp. 2-3. Received via email at the Office of the Special Rapporteur for Freedom of Expression. Available at: <http://www.cerigua.org/servicios/boletines/vz-021211.pdf>. See also: Melissa Vega, Cerigua. “Periodistas consideran que el Estado podría estar imponiendo la censura de temas riesgosos”. June 10, 2011. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=3200:periodistas-consideran-que-el-estado-podria-estar-imponiendo-la-censura-de-temas-riesgosos&catid=48:libertad-de-expresion&Itemid=10; Cerigua. April 7, 2011. *Disminuyen las agresiones contra la prensa, pero crece la autocensura*. Available at: http://cerigua.org/la1520/index.php/geografica/68-retalhuleu/index.php?option=com_content&view=article&id=2200:disminuyen-las-agresiones-contra-la-prensa-pero-crece-la-autocensura&catid=48:libertad-de-expresion&Itemid=10; Cerigua. July 2011. *Estado de situación de la libertad de expresión en Guatemala*. First Half of 2011. Available at: http://www.fileden.com/files/2008/2/26/1782822/estado_situacion_libertad_expresion_2011_primer_semestre.pdf

⁴³⁸ La Hora. September 16, 2011. *Preocupa a PDH la autocensura y la desprotección de la prensa*. Available at: <http://168.234.202.47/index.php/nacional/guatemala/departamental/144147-preocupa-a-pdh-la-autocensura-y-la>

281. The Office of the Special Rapporteur notes that the bill for the Community Media Act introduced to the Congress of the Republic of Guatemala in August 2009 has been held up. The bill was ruled on favorably by the Indigenous Peoples' Commission on January 12, 2010, and was included on the agenda for the full legislative session as of February 2010.⁴³⁹ However, during 2010 changes were made to the bill that would restrict the geographic range of the community radios and impose discriminatory criteria for accessing frequencies—a concern expressed by the Office of the Special Rapporteur in its 2010 annual report.⁴⁴⁰ During 2011, the initiative has not been debated in a full legislative session, even though the law would realize aspirations set forth in the Constitution of the Republic of Guatemala, is in line with the commitments of the 1996 peace accords, and could implement the recommendations of the Inter-American Commission on Human Rights and the Office of the Special Rapporteur for Freedom of Expression. Guatemalan organizations for the defense of freedom of expression and Frank La Rue, the United Nations Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, have criticized the reluctance to debate the bill, and have called into question the persistence of a status quo governed by a monopoly in the ownership of television channels and a high degree of concentration in the use and enjoyment of radio frequencies.⁴⁴¹

282. The Office of the Special Rapporteur reiterates its recommendation that, “the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for

...continuation

[desproteccion-de-la-prensa](http://www.periodistas-es.org/medios-de-comunicacion/periodismo-en-guatemala-autocensura-y-falta-de-proteccion-en-la-prensa-local); Periodistas en español. September 15, 2011. *Periodismo en Guatemala: autocensura y falta de protección en la prensa local*. Available at: <http://www.periodistas-es.org/medios-de-comunicacion/periodismo-en-guatemala-autocensura-y-falta-de-proteccion-en-la-prensa-local>

⁴³⁹ The bill contains the regulation of community media and recognizes the reservation of frequencies for community media outlets. It defines the objectives of the media, their coverage, their forms of support, and all matters pertaining to their operation. Congress of the Republic of Guatemala. January 12, 2010. *Dictamen favorable de la Comisión de Pueblos Indígenas sobre la iniciativa de Ley de Medios de Comunicación Comunitaria*. Available at: <http://www.congreso.gob.gt/manager/images/2AFE2678-528B-5313-7B70-050E060E5EAD.pdf>; Cerigua. July 14, 2011. *Rádios comunitarias buscan aprobación de Ley de Medios de Comunicación Comunitaria*. Available at: http://cerigua.org/la1520/index.php/nota-diaria/46-mujeres/index.php?option=com_content&view=article&id=3739:radios-comunitarias-de-guatemala-buscan-aprobacion-de-ley-de-medios-de-comunicacion-comunitaria-&catid=48:libertad-de-expresion&Itemid=10

⁴⁴⁰ According to the information received, the amendments mean that the coverage of community radios would be reduced to the local level, with a range of barely 2.5 km., and only on the FM band. The Office of the Special Rapporteur reiterates its 2009 call to the Guatemalan State regarding the need to implement effective policies that ensure equal opportunity of access to radio and television broadcast frequencies. In addition, it reminds the State of its obligation to take all measures necessary, including positive acts, to ensure media access for minority groups and its effective enjoyment without discrimination. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 283. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁴⁴¹ Prensa Libre. August 18, 2011. *Periodismo y Ética*. Available at: http://www.prensalibre.com/opinion/Periodismo-etica_0_538146269.html; Prensa Libre. April 6, 2011. *Quedaron evidenciados*. Available at: <http://legislaciones.item.org.uy/index?q=node/2605>; Cerigua. September 30, 2011. *Gobierno no promovió regulación de la ley para impulsar pluralidad en la información*. Available at: http://cerigua.org/la1520/index.php?option=com_content&view=article&id=5029:gobierno-no-promovio-regulacion-de-la-ley-para-impulsar-pluralidad-en-la-informacion-&catid=48:libertad-de-expresion&Itemid=10

assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair. Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch."⁴⁴²

283. Principle 12 of the Declaration of Principles establishes that: "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals." The Office of the Special Rapporteur again urges the Guatemalan State to bring its legislative framework on broadcasting into line with international standards on freedom of expression.

13. Guyana

284. The Office of the Special Rapporteur was informed of the cancellation of the critical interview and opinion program, *Keeping Them Honest* of *CNS Channel 6*, through a Saturday, July 23 letter sent by the channel's owner, Chandra Narine Sharma to one of the program's hosts. The letter regretted having to cancel the program, stating: "This decision, which takes effect immediately, has been taken for regulatory reasons following a conversation I have had with the relevant authorities concerning the content of the program." The note added, "I thank you most sincerely for choosing the People's Station CNS6 for your hugely popular and useful program and I trust that you will understand the pressure to which my TV station has been subject over the past several years and the sensitivity of the authorities in the current politically charged environment." According to the information available, the program's hosts, Ramon Gaskin and Christopher Ram, spoke harshly of this decision at a press conference held on July 25, 2011. They alleged that it was the result of government pressure. Previously, in May of 2011, following the controversial broadcast of remarks by government critic Anthony Vieira, the Advisory Committee in Broadcasting (ACB) had found *Channel 6* at fault for regulatory noncompliance and had made a recommendation to President Bharrat Jagdeo to close the station for 6 months. According to the information available, *Channel 6's* license had already been suspended for a month in 2005, and for four months in April 2008, for charges relating to its programming content.⁴⁴³

285. The Office of the Special Rapporteur received information indicating that on May 17, the Chairman of the Ethnic Relations Commission filed a claim for Gy\$50 million (approximately US\$250,000) each for defamation, and for aggravated and punitive damages, both against commentator and government critic Anthony Vieira, and the owner of *CNS6*, Chandra Narine Sharma. The claims arose from statements made by Vieira on May 4, 2011, alleged to have harmed the chairman's reputation and caused distress, shame, public humiliation, and ridicule. According to

⁴⁴² IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 284. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁴⁴³ The 2005 suspension reportedly occurred because of the alleged broadcast of false information, and the 2008 suspension was for airing a phone call in which, in the midst of a crime wave, a woman threatened to kill the president if anything happened to her children. Guyana Observer. July 26, 2011. *Hosts accuse Jagdeo of pressuring C.N. Sharma*. Available at: <http://www.guyanaobservernews.org/content/view/5621/94/>; Caricom News Network. July 25, 2011. *Guyana - Guyana TV station's pulling of controversial prog. points to Jagdeos's desperation*. Available at: http://caricomnewsnetwork.com/index.php?option=com_content&view=article&id=4534:guyana-guyana-tv-stations-pulling-of-controversial-prog-points-to-jagdeos-desperation-chris-ram&catid=54:latest-news; Guyana Times International. May 19, 2011. *Edghill sues Vieira, Sharma for Gy\$50M*. Available at: <http://www.guyanatimesinternational.com/?p=7010>

reports, Sharma acknowledged the mistake and apologized to the chairman for not editing the program prior to its airing.⁴⁴⁴

286. The Office of the Special Rapporteur for Freedom of Expression sent two requests for information to the State of Guyana, in accordance with Article 18 of the Statute of the IACHR. The first request was sent on August 22, 2011, and was subsequently reiterated and supplemented by a second request for information dated October 12, 2011. Both letters referred to the aforementioned cancellation of the interview and opinion program *Keeping Them Honest* and the particular situation of the *CNS Channel 6* network.

287. On October 14, 2011, the Office of the Special Rapporteur received Note No. 893-11 from the State of Guyana⁴⁴⁵, dated October 13, 2011, in reference to the information requested by this office in both letters. It first provided background information on the state of communications in the country, and then answered the specific questions. In its response, the State indicated that under Guyanese law, media operators are licensed by the National Frequency Management Unit, and monitored by the Advisory Committee on Broadcasting (ACB). They stressed that in view of the unfortunate incidents of violence that erupted in Guyana following the 1997 and 2001 elections, where some media outlets used their forums to promote ethnic violence, both the party of the government and the opposition agreed to set up a bipartisan committee to define media policies in the country. This committee would be comprised by representatives of the main political parties in parliament and by media experts.

288. They indicated that the committee recommended the amendment of the Post and Telegraph Act and the creation of a supervising advisory body. Accordingly, the law was amended on June 23, 2001 and on November 17, 2001, to create a supervisory committee that would be assigned specific powers. That committee was formed in 2002, and was comprised of three people: one appointed by the President, another by the leader of the opposition, and the last one by civil society. The committee is charged with monitoring the media's compliance with the Constitution and the laws of Guyana.

289. The State reported that since 2006 the President has been the public official in charge of the telecommunications sector. It indicated that, following a lengthy debate, Broadcasting Act No. 17 of 2011 was enacted by the National Assembly on July 28, 2011, and signed into law on September 27, 2011. This law provides for the creation of a National Broadcasting Authority in charge of the regulations and operations for the sector. The Telecommunications Bill and the amendments to the Public Utilities Commission Bill are currently pending before parliament. Those three laws, once they are approved, will provide a completely new legal framework for communications in Guyana.

290. The State asserts that in 2006 the Guyana Elections Commission (GECOM) developed a media code of conduct, which was revised in 2011 with the cooperation of all of the media companies, and that it has been signed by both public and private media outlets. In addition, GECOM created a Media Monitoring Unit (MMU) that operates during election season. Added to this is the "peace accord" signed by the political parties in 2006. They indicated that all of these efforts have been acknowledged by the international observation missions, including from the OAS.

⁴⁴⁴ Guyana Times International. May 19, 2011. *Edghill sues Vieira, Sharma for Gy\$50M*. Available at: <http://www.guyanatimesinternational.com/?p=7010>; Stabroek News. May 18, 2011. *Edghill files \$25M libel suit against Sharma, Vieira*. Available at: <http://www.stabroeknews.com/2011/news/stories/05/18/edghill-files-25m-libel-suit-against-sharma-vieira/>

⁴⁴⁵ Note No. 893-11 from the Government of Guyana. Ministry of Foreign Affairs. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

291. In response to the question regarding the cancellation of the program *Keeping Them Honest*, they maintained that the State does not interfere, and has not interfered, in agreements between private parties, as those agreements are strictly commercial. They asserted that the State did not play any role in the interruption of that program.

292. With respect to the suspensions of *CNS TV6*, the State indicated that it was suspended for a month, from January 22 to February 25, 2005, during a natural disaster that affected more than 300,000 people and 67% of the economy. The State provided the notice sent to the channel on that occasion, which indicated that it had violated the terms of its license in its broadcasting of programs that covered the floods in areas the President had declared disaster zones; in the State's opinion, the journalists misrepresented the situation by holding the government responsible for the suffering caused by the floods, and this rhetoric encouraged disorder and the creation of a hostile environment for the aid efforts. Consequently, the channel was given notice of the suspension and warned that another violation of its licensing terms could result in the revocation of its license.⁴⁴⁶

293. The channel's license was once again suspended for four months, from April 11 to August 28, 2008, because of the content of a live program aired on February 21, 2008, during which a viewer called in and threatened to kill the President. The State provided a copy of the letter sent to the channel indicating that it had violated the terms of its license and of the Post and Telegraph Act with its February 21, 22 and 23, 2008 broadcast of a program whose content advocated the death of the President, and for not having accurately presented statements made by the President on the subject of national security.⁴⁴⁷ They further stated that the channel had been warned by the Advisory Committee on Broadcasting (ACB) of numerous and repeated transgressions, and had been given the opportunity to respond to or correct them. They also indicated that in January of 2011 the channel's license was renewed for one year, like all the other licenses, and they provided a copy of the renewed license.⁴⁴⁸

294. In response to the question about the recent suspension of *CNS TV Channel 6*, the State indicated that on May 4, 2011, the channel had broadcast remarks by Anthony Vieira that defamed the President and his administration, as well as the Chairman of the Ethnic Relations Commission, and that it was an attack on various religious leaders. The Chairman of the Ethnic Relations Commission, Bishop Juan Edghill, filed a formal complaint in his own name before the ACB on May 10, 2011.⁴⁴⁹ The ACB provided notice of the complaint to the channel and indicated that it had violated Regulation 23 A (a-e) to the Post and Telegraph Act. The channel responded to the ACB stating that the broadcast of the remarks had been in error, and that they apologized to Bishop Edghill.

295. The State provided a copy of Regulation 23A, which specifies the necessary conditions for holding a television broadcast license. The amendment to the Post and Telegraph Act provides that section a) of Regulation 23 A was eliminated in 2001, and sections b) – i) were

⁴⁴⁶ Attachment 4 to Note No. 893-11: Letter from the Office of the Prime Minister to CNS Television Station Channel 6, dated January 22, 2005.

⁴⁴⁷ Attachment 5 to Note No. 893-11: Letter from the Office of the President to CNS Channel 6, dated April 11, 2008.

⁴⁴⁸ Attachment 6 to Note No. 893-11: Renewal of License No. 332V/12/OT/2011 from January 1, 2011 to December 31, 2011. It includes the appendix with the terms and regulations governing the license.

⁴⁴⁹ Attachment 9 to Note No. 893-11: Formal complaint filed before the ACB by Bishop Edghill, dated May 10, 2011.

redesignated as a) –h). Accordingly, sections a) – e) of the regulation establish the following obligations: a) ensure that program content does not offend good taste or decency, or encourage or incite racial hatred, crime, or public disorder, or offend public sensibilities; b) act reasonably and in good faith to ensure that news is presented with due accuracy and impartiality; c) ensure that persons whose work deals with political matters, industrial controversies, or public policy issues maintain their impartiality; d) ensure that due responsibility is exercised with respect to programs with religious content and, in particular, that such programs do not involve any abusive or derogatory treatment of the religious views and beliefs of the persons belonging to a specific religion or religious denomination; and e) ensure that the programs broadcast by the licensee meet the highest possible standard.⁴⁵⁰

296. On May 27, 2011, the ACB found that *CNS TV Channel 6* was liable for the violation of Regulation 23A, and it recommended that the President impose a penalty that could involve the suspension of the channel's license for a minimum of 6 months, or any other period of time deemed appropriate. In this regard, the ACB found that the channel had violated sections a), b), c), and e) of Regulation 23A. In the ACB's opinion, the channel's statements had the potential to create and heighten ethnic and religious tensions in a multi-ethnic and multi-religious society. It reminded the licensee that the media must not be used to insinuate that one religious group benefits more or less than another religious group, without having specific evidence with regard to the matter. It also noted that the company demonstrated a historical pattern of violating Regulation 23A a), b), c), d) and e) since April of 2002.⁴⁵¹

297. According to the information provided, the President reportedly met with the owners of the channel in June of 2011. However, after this meeting, the channel again broadcast the offensive program. On September 23, the President met with the owners once again and informed them of his decision to suspend the channel for 4 months. Formal notice of the suspension was given on September 30, 2011, specifying that the suspension would take effect the same day at 6:00 p.m. However, on October 9, 2011, the President announced that he was postponing the start date for the suspension to December 1, 2011.

298. The Office of the Special Rapporteur is very grateful to the State of Guyana for the information it forwarded, and notes that the IACHR has acknowledged the authority of States to regulate broadcasting activity. This authority encompasses not only the ability to determine the manner in which licenses are granted, renewed, or revoked but also the power to design and implement public policies on broadcasting, provided that the guidelines imposed by the right to freedom of expression are respected.⁴⁵²

299. Additionally, the State confirmed that subsequent to filing his complaint before the ACB, Bishop Edghill filed suit in the Guyana courts against the author of the remarks, Anthony Viera, and the licensee, Mr. Sharma, seeking more than Gy\$50 million (approximately US \$250,000) in damages.

300. The Office of the Special Rapporteur finds it relevant to note that, according to principle 10 of the IACHR's Declaration of Principles on Freedom of Expression, "The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the

⁴⁵⁰ Attachment 2 to Note No. 893-11: Amendments to the law entitled "*Post and Telegraph Act.*" June 27, 2001. Legal Supplement B.

⁴⁵¹ Attachment 8 to Note No. 893-11: Letter from the ACB to President Bharrat Jagdeo, dated May 27, 2011.

⁴⁵² CIDH. 2009 Annual Report. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Chapter VI: Freedom of Expression and Broadcasting. P. 414. Para. 9. Available at: <http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf>

person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” In addition, principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘*desacato laws*,’ restrict freedom of expression and the right to information.”

301. On October 27, 2011 the Office of the Special Rapporteur for Freedom of Expression received Note No. 897-11 from the State of Guyana,⁴⁵³ in which the State offered its comments on the information issued by the Office of the Special Rapporteur in its 2010 Annual Report. In that report, the Office of the Special Rapporteur made reference to a defamation lawsuit filed by the President of Guyana against *Kaieteur News* columnist and Editor Freddie Kissoon.⁴⁵⁴

302. The State indicated that freedom of expression is subject to important limitations, and that the purpose of defamation laws is to establish a balance between this freedom and the right to privacy and honor. The State’s position with respect to the particular case that appears in the report is that Mr. Kissoon made libelous statements that were published for purposes of negatively affecting the reputation of President Jagdeo. They indicated that the information gave the impression that the President is racist. They stress that the article is defamatory *per se* and that—in spite of the fact that it was a statement of opinion—it was defamatory based on specific facts and on allegations regarding those facts, which are defamatory.

303. The State alleged that the statement against the President was unnecessary and that it gives rise to liability from the time of its publication; that is, from June 28, 2010. In their view, the President has demonstrated *prima facie* that his allegations of defamation are consistent with principles 10 and 11 of the IACHR’s Declaration of Principles on Freedom of Expression, as well as with other principles of that declaration.

304. The Office of the Special Rapporteur is especially grateful for the information provided by the State. In this respect, it finds it important to underscore that, indeed, one of the inter-American standards on the issue establishes that any propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement to violence or any other similar unlawful action against any person or group of persons, for any reason, including race, color, religion, language, or national origin, shall be prohibited by law. In this respect, the incitement of violence for racial reasons is not protected by the right to freedom of expression.⁴⁵⁵

⁴⁵³ Note No. 897-11 from the Government of Guyana. Ministry of Foreign Affairs. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁵⁴ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). P. 109. Para. 288-289. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁴⁵⁵ Without prejudice to the presumption of coverage *ab initio* of all forms of human expression by freedom of expression, there are certain types of speech that are excluded from this freedom’s scope of coverage by virtue of express prohibitions set forth in international human rights law. There are essentially three types of speech that do not enjoy protection under Article 13 of the American Convention, according to the treaties in force: *Propaganda for war and advocacy of hatred that constitute incitements to violence; direct and public incitement to genocide; and child pornography*. IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Paras. 57-60. Available at: <http://www.cidh.org/pdf%20files/Marco%20Juridico%20Interamericano%20estandares.pdf>

305. In this respect, “The IACHR has said, following the settled international doctrine and jurisprudence on the subject, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitement to commit crimes, the breaking of public order or national security) must be backed up by actual, truthful, objective and strong proof that the person was not simply issuing an opinion (even if that opinion was hard, unfair or disturbing), but that the person had the clear intention of committing a crime and the actual, real and effective possibility of achieving this objective.”⁴⁵⁶

306. In addition, when the matter concerns speech that does not incite violence, or statements that may be offensive to a public servant, the proper forum in which to allege liability must be the civil courts, bearing in mind the criteria of *actual malice* and the proportionality of the potential penalty. In this regard, principle 10 of the IACHR’s previously cited Declaration of Principles on Freedom of Expression establishes that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

14. Haiti

307. The Office of the Special Rapporteur notes that one year after the earthquake that took place on January 12, 2010, the Haitian media was showing signs of reconstruction, although multiple difficulties persist. According to the information received, 25 of the 50 radio broadcasters in Port-au-Prince were back to broadcasting one month after the earthquake. After one year, audiovisual broadcasting in the capital was almost fully reestablished. The assistance of the Haitian State was relevant to these results. The State provided support for 30 broadcasters in the capital with a fund of two million American dollars, providing support that varied between US \$5,000 and \$25,000 dollars. However, assistance for rural broadcasters has been slower, particularly for those located in the most devastated towns. The Media Operating Center in Port-au-Prince continued to function. It was set up by international aid organizations and allowed dozens of local and foreign journalists to continue to work. As far as print media, the newspaper *Le Nouvelliste* was back in daily circulation by April of 2010, while *Le Matin* became a weekly edited in the Dominican Republic and was forced to dismiss half its employees. *Bon Nouvel*, the last newspaper in the creole language, has closed.⁴⁵⁷

308. The Office of the Special Rapporteur takes note of the bill submitted on May 5 to Senator Melius Hypolite by Haitian community broadcasters and the Entertainment and Social

⁴⁵⁶ On this issue, see the following cases of the European Court of Human Rights: *Karatas v. Turkey* [GC], No. 23168/94. ECHR 1999-IV; *Geger v. Turkey* [GC], No. 24919/94, 8 July 1999; *Okçuoglu v. Turkey* [GC], No. 24246/94, 8 July 1999; *Arslan v. Turkey* [GC], No. 23462/94, 8 July 1999, *Erdogdu v. Turkey*, No. 25723/94, § 69, ECHR 2000 – VI. Also see I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 77. Cited in: IACHR, Office of the Special Rapporteur for Freedom of Expression. *Inter-American Legal Framework of the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009. Para. 58. Available at: <http://www.cidh.org/pdf%20files/Marco%20Juridico%20Interamericano%20estandares.pdf>

⁴⁵⁷ Reporters Without Borders. January 11, 2011. *The reconstruction of the media does not yet include the resurrection of the press*. Available at: http://es.rsf.org/haiti-la-reconstruccion-de-los-medios-no-11-01-2011_39278.html; Committee to Protect Journalists (CPJ). February 15, 2011. *Attacks on the press 2010: Haiti*. Available at: <http://cpj.org/2011/02/attacks-on-the-press-2010-haiti.php>

Communication Society (Saks) that would provide these broadcasters with a legal framework and guarantee them conditions that are equal to those of the other media. Marie Laurence Jocelyn Lassègue, the Minister of Culture and Communication, recognized the important role played by community broadcasters during natural disasters. She publicly expressed her support for the initiative, and before the parliamentary vote she also expressed a commitment to promoting the availability of funding for the bill.⁴⁵⁸

309. The Office of the Special Rapporteur received information on a variety of attacks on the media and journalists in the context of the elections held in November of 2010 and on March 20, 2011. On December 7, a group of people looted Radio Lebon FM, in the Les Cayes locality, and set it on fire. Its owner was a Senate candidate.⁴⁵⁹ On December 9, individuals presumed to be partisans of the winning candidate detained and intimidated journalist Esther Dorestal, with radio station Metropole, as she was on her way to work.⁴⁶⁰ Likewise, a cameraman with Haiti Press Network was attacked after being pointed out in front of the National Palace.⁴⁶¹ That same day Guyler C. Delva, a correspondent with the Reuters news agency and the secretary general of the Haitian organization SOS Journalistes, was attacked by officers who were providing guard services in front of the Karibe Convention Center after they denied him access to the auditorium where the candidates would be debating.⁴⁶² On March 20, 2011, alleged members of the party INITE attacked Jean Preston Toussaint, the correspondent for Radio Kiskeya on the Gonâve Island.⁴⁶³

310. On April 12, 2011, individuals who presumably sympathize with governing party INITE set community radio station *Tèt Ansanm Karis* on fire, along with the premises of the Center for Culture and Development (SKDK), the Library of the Jacques Roumain Community, and six nearby homes, all in the community of Carice. According to the information received, armed men broke into the facilities after the broadcaster issued the final results of the legislative election that took place on March 20 and leveled accusations of fraud committed during the election. According to reports, the radio station personnel identified the perpetrators of the attack. The fire completely

⁴⁵⁸ World Association of Community Broadcasters (AMARC). May 6, 2011. *Haitian community radio stations submit bill to senator*. Available at: <http://legislaciones.item.org.uy/index?q=node/2798>; AlterPresse. May 5, 2011. *Haiti-Médias: Le ministère de la culture et de la communication s'engage à soutenir le projet de loi sur les radios communautaires*. Available at: <http://www.alterpresse.org/spip.php?article11002>

⁴⁵⁹ Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: <http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010,39010.html>; Última Hora. December 8, 2010. *Disturbances mark announcement of election results in Haiti*. Available at: <http://ultimahora.es/mallorca/noticia/noticias/internacional/disturbios-tras-anunciarse-los-resultados-electorales-en-haiti.html>

⁴⁶⁰ Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: <http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010,39010.html>; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infol=808&idioma=us

⁴⁶¹ Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: <http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010,39010.html>; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infol=808&idioma=us

⁴⁶² Reporters Without Borders. December 10, 2010. *Press relatively affected during postelection tensions: For how long?* Available at: <http://es.rsf.org/haiti-la-prensa-relativamente-afectada-10-12-2010,39010.html>; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infol=808&idioma=us

⁴⁶³ Conseils Communication Construction. March 22, 2011. *Haiti dans la presse Nationale et Internationale-Mardi 22 Mars 2011*. Available at: <http://www.ctroisgroup.com/revue-de-presse/406-haiti-dans-la-presse-nationale-et-internationale-mardi-22-mars-2011.html>; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infol=808&idioma=us

destroyed the equipment, building, and archives of the radio station and the other community organizations.⁴⁶⁴

311. The Office of the Special Rapporteur learned of death threats and incidents of sabotage against several journalists and media outlets in Port-au-Prince starting at the beginning of the second round of the election campaign. In response to this situation, on March 28, Patrick Moussignac, the president and general director of Radio Télévision Caraïbes (RTVC), asked for security assistance from the United Nations Stabilization Mission in Haiti (MINUSTAH) for its personnel and facilities.⁴⁶⁵ Information was also received on death threats received by nearly 15 communicators in different media outlets throughout the country during the election and in connection with news items that could have been considered unfavorable to certain candidates. Due to the warnings received, journalists Jean-Claude Dumény, of *Radio-Télé Ginen*, and Patrick Jeune, of *Radio One*, had to go into hiding to escape armed attacks from individuals trying to kill them.⁴⁶⁶

312. According to information received, on June 20, 2011, two hosts of the program “Les on dit” (They Said It) of Radio Prévention - Ernst Joseph and Wolf ‘Duralph’ François - were arrested. Joseph is the owner of the radio station. The authorities confiscated the transmitter and other radio equipment. According to the information, Joseph and François were called before a first instance court in Petit-Goâve on orders of the Public Prosecutor’s Office based on a petition signed by officials and members of civil society, including the mayor of the city, to answer questions related with information and opinion broadcast on the program. When the news emerged that the journalists were in the court, a large group of people gathered outside the building and threw rocks and clashed with police and United Nations security forces. The government commissioner had ordered the two journalists arrested on charges of “defamation,” “disturbance of the public order” and “damage to public property.”⁴⁶⁷

313. The Office of the Special Rapporteur received information according to which on April 5, 2011, five journalists with *Télévision Nationale d’Haïti (TNH)* were fired, and a criminal complaint for defamation against three of them was filed on April 8 by the general director of the State broadcaster, Pradel Henriquez. According to the information received, TNH’s editor-in-chief, Eddy Jackson Alexis, and journalists Josias Pierre and Jacques Innocent were fired after alleging that the broadcaster was biased in favor of the winning presidential candidate. Henriquez argued that he was the victim of a campaign of defamation carried out by the journalists and requested a prison term for Alexis and Pierre of up to three years and the payment of a fine of 50 million

⁴⁶⁴ World Association of Community Broadcasters (AMARC). April 25, 2011. *Community radio station burned in Carice, Haiti*. Available at: <http://lists.amarc.org/pipermail/amarcinfoderechos/2011-April/000418.html>; Committee to Protect Journalists (CPJ). April 26, 2011. *Haitian radio station destroyed in arson attack*. Available at: <http://www.cpj.org/2011/04/haitian-radio-station-destroyed-in-arson-attack.php>

⁴⁶⁵ Radio Télévision Caraïbes (RTVC). March 30, 2011. *Radio Television Caraïbes sollicite la protection de la MINUSTAH contre des menaces de mort et de sabotage*. Available at: <http://www.radiotelevisioncaraibes.com/nouvelles/haiti/rtvc-sollicite-la-protection-de-la-minustah.html>; Inter-American Press Association (IAPA). April 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoid=808&idioma=us

⁴⁶⁶ Le Nouvelliste. May 2, 2011. *Deux journalistes contraints de prendre le maquis*. Available at: <http://www.lenouvelliste.com/article.php?PubID=1&ArticleID=91991&PubDate=2011-05-02>; Radio Métropole. May 4, 2011. *Cri d’alarme des associations à l’occasion de la journée de la presse*. Available at: http://www.metropolehaiti.com/metropole/full_une_fr.php?id=19078&action=print

⁴⁶⁷ Reporters Without Borders. June 29, 2011. *Two Petit-Goâve journalists detained arbitrarily*. Available at: http://es.rsf.org/haiti-detienen-de-forma-arbitraria-a-dos-29-06-2011_40552.html; Haitian-Truth.org. June 30, 2011. *Press Freedom Organization Condemns Arrest of Journalists in Petit-Goâve*. Available at: <http://www.haitian-truth.org/press-freedom-organization-condemns-arrest-of-journalists-in-petit-goave/>; Inter-American Press Association (IAPA). October 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&infoid=833&idioma=us

gourdes (some US\$1,100) for damages. The Minister of Culture and Communication of the Government, Marie Laurence Jocelyn Lassègue, asked the general director of the State television channel to dialogue with the dismissed employees and with media and journalist organizations.⁴⁶⁸

314. According to information received, the security detail of President Martelly was involved in a series of incidents with employees of the media. On May 22, 2011, police officers prevented at least three journalists from working, pushing them and damaging their equipment while they were covering the president's visit to Gonaïves.⁴⁶⁹ On July 28, the president's security personnel attacked journalists covering his visit to the city of Jacmel.⁴⁷⁰

315. Principle 9 of the Declaration of Principles on Freedom of Expression states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

15. Honduras⁴⁷¹

316. The Inter-American Commission on Human Rights has received information relating to the situation of the right of freedom of expression in Honduras, from civil society as well as from the State of Honduras. In terms of the latter, on December 16, 2011, the State of Honduras sent Official Letter No. 1899-DGAE-11 to the IACHR, forwarding Official Letter No. SP-A-158-2011 from the Office of the Attorney General of Honduras, in which the State makes reference to the situation of freedom of expression in Honduras and provides information with respect to the particular cases that have been reported to the IACHR and which are addressed in this report.

A. Murders

317. The Special Rapporteur for Freedom of Expression of the IACHR has counted at least 13 murders of journalists and communicators in Honduras between 2010 and 2011, which could be related to their professional activities. The IACHR deplores these homicides and urges the State to conduct diligent and thorough investigations paying particular attention to the possibility of the motive of the crimes being the professional activities of the communicators. In addition, the IACHR appreciates the information provided by the State of Honduras with respect to the ongoing investigations into these murders and other acts of violence against journalists. It urges the State to

⁴⁶⁸ Reporters Without Borders. April 29, 2011. *President-Elect urged to help defuse tension, threats to media freedom*. Available at: <http://en.rsf.org/haiti-president-elect-urged-to-help-28-04-2011,40128.html>; Radio Kiskeya. April 14, 2011. *Dossier de la TNH: La ministre de la Culture et de la Communication, Marie Laurence Jocelyn Lassègue, demande au directeur de la télévision d'Etat de dialoguer avec les 3 journalistes révoqués*. Available at: <http://radiokiskeya.com/spip.php?article7674>; Reporters Without Borders. April 12, 2011. *State TV Chief Fires Three Journalists, Brings Criminal Defamation Suit Against Them*. Available at: <http://en.rsf.org/haiti-state-tv-chief-fires-three-12-04-2011,40011.html>

⁴⁶⁹ Inter-American Press Association (IAPA). October 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=833&idioma=us; Defend Haiti. October 11, 2011. *Haitian Journalist Assn, Shocked by Matelly 'Gross' Attitude Toward Press*. Available at: <http://defend.ht/news/articles/media/1785-haitian-journalist-assn-shocked-by-martelly-gross-attitude-toward-press>

⁴⁷⁰ Inter-American Press Association (IAPA). October 2011. *Country reports: Haiti*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=833&idioma=us; Defend Haiti. October 11, 2011. *Haitian Journalist Assn, Shocked by Matelly 'Gross' Attitude Toward Press*. Available at: <http://defend.ht/news/articles/media/1785-haitian-journalist-assn-shocked-by-martelly-gross-attitude-toward-press>

⁴⁷¹ This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

follow up on these investigations diligently and to open the pertinent investigations in those cases where they have not yet been opened.

318. In its report to the IACHR, the State began by noting the murders of journalists in 2007 and 2009, years in which the murders of journalist Carlos Alberto Salgado (2007) and journalists Bernardo Rivera Paz, Rafael Munguía and Osman Rodrigo López (2009) were reported. The State also indicated that it is aware of its obligation to guarantee diligent and exhaustive investigations into acts that violate freedom of expression, and that the State “has requested the assistance of friendly countries to strengthen investigative teams with more personnel and with the necessary logistical resources.” In this same respect, the State specified that “between 2010 and 2011, the Office of the Public Prosecutor has documented 14 cases involving the deaths of journalists, in 9 of which the investigations have yielded specific theories and suspects.” As a result, those 9 cases have been brought before the courts.⁴⁷² In particular, the IACHR urges the State not to rule out the theory that the victims could have been murdered in retaliation for the exercise of their right to freedom of expression, and to thoroughly exhaust any line of investigation in this respect.

319. In an initial case reported to the IACHR, concerning the murder of journalist Henry Suazo on December 28, 2010 in the town of La Masica, Department of Atlantida, the information received indicates that two individuals shot the journalist several times as he was leaving his home in the morning. He reported on general news as a correspondent for radio HRN and was a reporter on the local television news program *Cable Visión del Atlántico*. A few days prior to the murder, journalist Suazo had filed a complaint that he had received a death threat in a text message on his cell phone.⁴⁷³ With regard to this case, the State indicated that “On January 21, 2011, the Office of the Public Prosecutor filed a criminal complaint against an individual alleged to be the direct perpetrator of the offense of murder, and on the same date, the corresponding Court issued a warrant for the suspect’s arrest.”⁴⁷⁴

320. On May 11, 2011, journalist Hector Francisco Medina Polanco, manager and anchor of *Omega Visión* television station, was murdered in Morazan, Department of Yoro. According to reports, when he was leaving the television station the night of May 10, the journalist was followed by two unknown individuals riding on a motorcycle, who shot him as they approached his home. Hector Medina was taken to a hospital alive in San Pedro Sula, where he passed away early in the morning of May 11. In addition to managing the local TV station *Omega Visión*, Hector Medina worked as a producer and anchor on TV9 news, where he had recently reported on alleged irregularities by local authorities and land ownership disputes. He had been telling his family for weeks prior to his murder that he was receiving death threats.⁴⁷⁵ In August, a brother of the

⁴⁷² Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁷³ IACHR. Special Rapporteurship for Freedom of Expression. December 29, 2010. Press Release R125/10. [Special Rapporteurship for Freedom of Expression condemns murder of journalist in Honduras](#); Committee for the Protection of Journalists (CPJ). December 30, 2010. [Reportero hondureño abatido frente a su vivienda](#). [Honduran reporter gunned down in front of his home]; Reporters without Borders. December 29, 2010. [Honduras: Henry Suazo, décimo periodista asesinado en 2010](#). [Honduras: Henry Suazo, 10th journalist murdered in 2010]; Inter-American Press Society (SIP). December 29, 2010. [Condena la SIP asesinato de periodista en Honduras](#). [SIP condemns murder of journalist in Honduras]; El Nuevo Diario. December 28, 2010. [Asesinan a otro periodista en Honduras](#). [‘Another journalist is murdered in Honduras’]

⁴⁷⁴ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁷⁵ IACHR. Special Rapporteurship for Freedom of Expression. May 12, 2011. Press Release R45/10. [Relatoría Especial para la Libertad de Expresión deplora asesinato contra periodista en Honduras](#). [Special Rapporteur for Freedom of Expression deplors murder of journalist in Honduras]; Inter-American Press Association (IAPA). May 12, 2011. [La SIP](#)

murdered journalist, who is also in the same field, charged that he had been threatened to persuade him to stop demanding an investigation of the crime.⁴⁷⁶ In reference to this case, the Honduran State specified that “Various proceedings have been conducted, including the taking of statements from the channel’s employees, from relatives, and from eyewitnesses, as well as from individuals who worked with him as a community outreach worker for PROHECO [...]; inspections and other expert and scientific proceedings have also been conducted, and his cell phone records have been investigated. There are two theories in the case.”⁴⁷⁷

321. The Special Rapporteurship learned of the murder of the owner of *Canal 24* Luis Ernesto Mendoza Cerrato, in the City of Danli, El Paraíso, on May 19, 2011. Based on the available information, at least three hooded and heavily armed men ambushed Luis Mendoza and shot him several times at the entrance to the television station, when he came to work in the morning. Mendoza Cerrato died during the shooting while two women and a child, who were passing by, were wounded. The perpetrators fled in a vehicle, which was abandoned and set aflame later.⁴⁷⁸ The Honduran State indicated that the case is related to another case and that “various measures have been undertaken, such as telephone wiretaps, judicial and police background checks, and others.”⁴⁷⁹

322. It was also reported that on July 14, 2011, journalist Nery Jeremías Orellana, Director of *Radio Jaconguera* and correspondent at *Radio Progreso*, was murdered in the municipality of Candelaria, Department of Lempira. According to the information in the file, journalist Orellana was riding on a motorcycle toward the radio station when he was intercepted by unknown individuals, who shot him several times in the head. He was transported alive to the hospital of Sensuntepeque but died a few hours later. As director of *Radio Joconguera*, he had opened spaces of discussion on radio programs of the Catholic Church and of the National People’s Resistance Front (FNRP) and had held a critical position of the 2009 *coup d’état*. Shortly before his murder, Orellana had confirmed his attendance at a meeting of community radio stations scheduled for July 15, 2001.⁴⁸⁰ The State of Honduras reported that “Several proceedings have been

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[repudia crimen y reclama al Gobierno hondureño cumplir compromiso para combatir violencia e impunidad](#). [SIP condemns crime and calls on Honduran Government to fulfill commitment to combat violence and impunity]; International Freedom of Expression Exchange (IFEX). May 18, 2011. [Asesinato de periodista destaca estado de país como uno de los peores para la prensa](#). [Murder of journalist highlights status of country as one of the worst for the press]; EFE News Agency. May 16, 2011. [Francia condena el asesinato del periodista hondureño Héctor Francisco Medina](#). [France condemns the murder of Honduran journalist Hector Francisco Medina]

⁴⁷⁶ El Heraldo. August 19, 2011. [Periodista denuncia amenazas de muerte](#). [Journalist denounces death threats]; Tiempo. August 10, 2011. [Familiares de comunicador asesinado denuncian amenazas](#). [Family of murdered journalist denounce threats]

⁴⁷⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁷⁸ IACHR. Special Rapporteurship for Freedom of Expression. May 27, 2011. Press Release R49/11. [Relatoría Especial deplora asesinato y atentado contra propietario y gerente de medios de comunicación en Honduras](#). [Special Rapporteurship deploras murder and attempted murder of owner and manager of media outlets in Honduras]; Committee for the Protection of Journalists (CPJ). May 25, 2010. [Un ejecutivo de medios asesinado, otro herido](#). [One Media Executive Murdered, Another Wounded]; La Tribuna. May 19, 2011. [Encapuchados ultimán a conocido empresario](#). [Hooded men murder well-known businessman]

⁴⁷⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁸⁰ IACHR. Special Rapporteurship for Freedom of Expression. July 18, 2011. Press Release R70/11. [Relatoría Especial para la Libertad de Expresión condena nuevo asesinato de periodista en Honduras y pide investigación exhaustiva](#). [Special Rapporteurship for Freedom of Expression condemns latest murder of journalist in Honduras and calls for thorough investigation]; Reporters Without Borders. July 15, 2011. [Asesinan al joven director de una radio la víspera de una reunión de](#)

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conducted, including the taking of statements from coworkers, relatives, and protected witnesses, inspections and other expert and scientific proceedings. Also, mutual legal assistance was requested from El Salvador, the place of his death. There is a theory and a suspect in the case.”⁴⁸¹

323. Information was also received of the murder of the popular social communicator Medardo Flores, on September 8, 2011 in the community of Blanquito, Puerto Cortés. According to available information, several unidentified individuals murdered Medardo Flores with firearms in the town where he resided. Medardo Flores, who was a farmer by trade, was part of a group of volunteer popular communicators of *Radio Uno* of San Pedro Sula and was in charge of finances in the northern part of the country for the Broad People’s Resistance Front (FARP).⁴⁸²

324. As the Inter-American Commission has held repeatedly, it is of paramount importance for the State to urgently conduct investigations through specialized independent agencies under special protocols of investigation that lead to conclusively determining whether or not the crimes are indeed connected to the practice of the profession and to enable the prosecution and conviction of the persons responsible for them. Additionally, it is essential for the State to put permanent mechanisms into place in order to ensure the lives and integrity of at-risk communicators. The persistence of impunity not only is a threat to the family members of the victims but also has an adverse effect on society as a whole, because it sows fear and leads to self-censorship.⁴⁸³

325. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

B. Assaults on journalists and media

326. According to the information on file, on May 23, 2011, in Tegucigalpa, the managing editor of the newspaper *La Tribuna*, Manuel Acosta Medina, was the target of an attempt on his life, which left him seriously wounded. Mr. Acosta’s car was blocked by two vehicles with armed individuals on board. When Acosta Medina accelerated to escape, the criminals shot and wounded him. The victim was able to drive home where his family came to his aid and took him to a hospital.

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[medios comunitarios](#). [Young director of a radio station murdered on the eve of community media meeting]; Radio Progreso. July 16, 2011. [Asesinan director de Radio Jaconguera](#). [Director of Radio Jaconguera murdered]

⁴⁸¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁸² IACHR. Special Rapporteurship for Freedom of Expression. September 12, 2011. Press Release 100/11. [Relatoría Especial para la Libertad de Expresión condena asesinato de comunicador en Honduras](#). [Special Rapporteur for Freedom of Expression condemns murder of journalist in Honduras]; Reporters Without Borders. September 10, 2011. [Asesinado el periodista Medardo Flores](#). [Journalist Medardo Flores murdered]; El Tiempo. September 9, 2011. [Asesinan a estudiante de locución Medardo Flores de Radio Uno](#). [Radio broadcasting student of Medardo Flores of Radio Uno murdered]; Inter-American Press Association (IAPA). September 12, 2011. [Condena la SIP asesinato del quinto periodista ultimado en Honduras en 2011](#). [SIP condemns fifth murder of journalists in Honduras in 2011]

⁴⁸³ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Para. 312.

Shortly after the attempt, the Police arrested five armed suspects who were riding in a similar vehicle to the one used in the attack.⁴⁸⁴

327. On April 27, 2011, a group of armed men allegedly attempted to ambush the director of *Radio Uno*, Arnulfo Aguilar, when he was returning to his home in San Pedro Sula. According to available information, Aguilar had managed to lock the gate and enter the residence before the suspects reached him. The journalist asked the Police for help, which arrived one hour later, when the individuals had already left. The incident occurred a few days after *Radio Uno* released cables from the US Department of State reported that weapons given to the Honduran Army were alleged to be in the possession of organized crime groups. *Radio Uno* has held a critical editorial line against the June 2009 *coup d'état*.⁴⁸⁵ The State provided information with respect to the case, indicating that "Several proceedings have been conducted, including the taking of statements from the victim and from witnesses, inspections, and other procedures. At this time, we are waiting for the victim to go to the Office of the Public Prosecutor in order for a psychological evaluation to be conducted."⁴⁸⁶

328. The Special Rapporteurship has expressed its concern in light of several acts of harassment and violence perpetrated against several community radio stations and reminds the Honduran State of its obligation to investigate these incidents and make sure that its agents, or private individuals, do not attack people who exercise their freedom of expression through these media outlets.

329. According to reports, on March 13, 2011, the Director of *La Voz de Zacate Grande*, Franklin Meléndez, was allegedly threatened by two men in connection with coverage of the land disputes in the area and one of them is alleged to have shot him in the leg. The assailants were fully identified but the local authorities did not take any action against them.⁴⁸⁷ A few hours later, the same individual that allegedly shot Melendez, threatened to kill journalist Ethel Correa of *La Voz de Zacate Grande*, whom he warned: "You'll be the second to die."⁴⁸⁸ On August 4, 2011 a request for an arrest warrant from the public prosecutor was filed for the attempted murder against the person suspected of shooting Franklin Melendez, and on August 9, the presiding judge issued an arrest

⁴⁸⁴ IACHR. Special Rapporteurship for Freedom of Expression. May 27, 2011. Press Release R49/11. [Relatoría Especial deplora asesinato y atentado contra propietario y gerente de medios de comunicación en Honduras](#). [Special Rapporteurship deploras murder and attempted murder against owner and manager of media outlets in Honduras]; Committee to Protect Journalists (CPJ). May 25, 2010. [Un ejecutivo de medios asesinado, otro herido](#). [One Media Executive Killed in Honduras, Another Wounded]; La Tribuna. May 24, 2011. [Atentado criminal contra gerente de La Tribuna](#). [Criminal Attempt on the Life of Manager of La Tribuna]; C-Libre/IFEX. May 24, 2011. [Desconocidos tirotean al gerente de diario "La Tribuna"](#). [Unidentified Men Shoot Manager of the Daily "La Tribuna"]

⁴⁸⁵ Committee to Protect Journalists (CPJ). April 29, 2011. [Director de radio hondureño emboscado por sujetos armados](#). [Director of Honduran Radio Station Ambushed by Armed Individuals]; Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición](#). [Honduras: Assault on Owner of Opposition Radio Station Thwarted]

⁴⁸⁶ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras." p. 8.

⁴⁸⁷ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11 [Office of the Special Rapporteur Expresses Concern Over Attacks Against Media in Honduras](#); Reporters Without Borders. March 16, 2011. [Police try to hush up shooting of community radio station's president](#).

⁴⁸⁸ C-Libre/IFEX. March 21, 2011. [Comunicadora de la emisora La Voz de Zacate Grande amenazada de muerte](#). [Women Communicator of the radio station La Voz de Zacate Grande threatened with death]; Reporters Without Borders. March 24, 2011. [Se multiplican los ataques y agresiones a la prensa](#). [Attacks and assaults on the press increase]

warrant⁴⁸⁹. The State of Honduras provided information indicating that “The defendant has been arraigned and the initial hearing was held on October 4, 2011.”⁴⁹⁰

330. On April 16, a journalist from the *La Voz de Zacate Grande* station, Pedro Canales, is alleged to have been the target of sabotage and death threats. That same day, Canales noticed unidentified individuals had sunk nails into one of the tires of his vehicle and later two armed individuals allegedly intercepted him and pointed their weapons at him.⁴⁹¹ Reports also indicated that two journalists from the community radio station *La Voz de Zacate Grande* had been detained in the performance of their reporting duties on December 15, 2010. Based on the available information, correspondents Elia Hernández and Elba Rubio were covering the forced removal of a family from land in the community of Coyolito, on the Isle of Zacate Grande, where they allegedly were detained by members of the preventive Police and the Navy. According to the report, the lady reporters were stripped of their journalistic accreditation and cameras, held incommunicado for 36 hours, and charged with the crime of disobedience.⁴⁹² The journalists are alleged to have been restricted by the court from performance of their journalistic tasks, in prohibiting their departure from the country, compelling them to secure permission to leave Coyolito, forcing them to appear before a judge every two weeks and prohibiting their participation in public demonstrations, as well as prohibiting them from having contact with the community of Coyolito.⁴⁹³

331. According to the information received by the IACHR, on February 15, individuals identified as agents of the national Department of Criminal Investigation (DNIC), are alleged to have show up at the radio station in order to serve notice of an arrest warrant for disobeying an order to shut down the radio station, that had been issued in 2010 and to conduct an inspection. It is claimed that the agents attempted to force their way inside when radio station officials prevented them from entering.⁴⁹⁴ Additionally, on April 7 the Office of the Prosecutor of Choluteca allegedly issued arrest warrants for the crimes of disobeying authority and usurpation of land, against eight individuals who were members of *La Voz de Zacate Grande* and the Land Titling Movement

⁴⁸⁹ Communication from the Center for Justice and International Law (CEJIL) to the IACHR. Ref: Communicators of *The Voice of Zacate Grande* MC115-11. September 2, 2011.

⁴⁹⁰ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁹¹ C-Libre/IFEX. April 19, 2011. [Atentan contra comunicador social de la radio La Voz de Zacate Grande](#). [Attempt on the Life of Social Communicator of Radio Station La Voz de Zacate Grande]; Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición](#). [Honduras: Attack against owner of opposition radio station thwarted]

⁴⁹² IACHR. Special Rapporteurship for Freedom of Expression. January 11, 2011. Press Release R1/11. [Relatoría Especial manifiesta su preocupación por hostigamiento de radios comunitarias en Honduras](#). [Office of the Special Rapporteur for Freedom of Expression of expresses its concern over the recent acts of harassment sustained by several community radio broadcasters in Honduras]; World Association of Community Broadcasters (AMARC)/IFEX. December 21, 2010. [Apresan a corresponsales de la emisora Zacate Grande](#). [Correspondents from radio station Zacate Grande Detained]; World Association of Community Broadcasters (AMARC)/IFEX. December 29, 2010. [Corresponsales de radio comunitaria indiciadas por el delito de “desobediencia”](#). [Correspondents from community radio station charged with crime of ‘disobedience’]; Reporters Without Borders. December 27, 2010. [Las dos corresponsales de La Voz de Zacate Grande podrían ser juzgadas por el delito de desobediencia](#). [Two women correspondents from La Voz de Zacate Grande could be tried for crime of disobedience]

⁴⁹³ Reporters without Borders. January 20, 2011. [Medidas judiciales contra dos corresponsales de una radio comunitaria a pesar de la falta de condena sobre el fondo](#). [Judicial measures against correspondents of community radio station despite non conviction on the merits]; AMARC/IFEX. January 21, 2011. [Emiten auto de prisión a corresponsales de radio](#). [Order of imprisonment issued against correspondents of radio station]

⁴⁹⁴ World Association of Community Broadcasters (AMARC). February 17, 2011. [Reinicia el hostigamiento en contra de La Voz de Zacate Grande por parte del gobierno de Honduras](#). [Harassment by government against la Voz de Zacate Grande resumes]; La Voz de Zacate Grande. February 15, 2011. [Policía llega a La Voz de Zacate Grande](#). [Police arrive at La Voz de Zacate Grande]

(*Movimiento de Titulación de Tierras*), including Franklin Meléndez, Ernesto Lazo, Rafael Osorio, Danilo Osorio, Pedro Canales, Wilmer Rivera, Ethel Correa and Benito Pérez.⁴⁹⁵ In light of proof of a situation of imminent danger, on April 18, 2011, the IACHR requested the Honduran State to adopt urgent precautionary measures to ensure the lives and physical integrity of the communicators of *La Voz de Zacate Grande*, and to work out a specific agreement with the beneficiaries and their representatives on the measures to be taken.⁴⁹⁶

332. The State indicated that the eviction from the property where the station operates was ordered by the District Trial Court of Amapala, and that the measure “is not related to the journalists’ activities, but rather to the unlawful appropriation of the land on which [the station] operates.” The State confirmed that a criminal complaint was filed against the 8 above-named journalists for the offenses of “unlawful appropriation and tax fraud,” and noted that following the issuance of the warrants for their arrest, the journalists appeared voluntarily at an arraignment hearing held on May 5, 2010, at which “the Office of the Public Prosecutor requested that the defendants be granted supervised pretrial release.”⁴⁹⁷

333. The State established that on May 27, 2010, the Court issued an incarceration order for the offense of unlawful appropriation with respect to 5 of the defendants, while the complaint alleging tax fraud was dismissed with prejudice. The Court also “affirmed the precautionary measures established at the arraignment hearing” with respect to the 5 aforementioned journalists. In addition, the Court ordered the dismissal without prejudice of the complaints against the other 3 accused journalists, and ordered that the property be vacated immediately. According to the information received, all of the defendants appealed the incarceration order before the Choluteca Court of Appeals. That appeal was declared inadmissible by the court on August 4, 2010. Subsequently, on October 11, 2010, the defendants filed a writ of *amparo* [petition for a constitutional remedy], which was forwarded to the Supreme Court of Justice on October 11, 2010.⁴⁹⁸

334. The information provided by the State indicates that on June 2, 2010, the court officer in charge of executing judgments carried out the eviction of the property, together with members of the military and the National Police. The State established that “The defendants were not there, and the door was locked. Accordingly, the specified property was cordoned off with yellow adhesive tape, as ordered by the Court.” In spite of the fact that the State indicated that upon arriving at the property “they were met by unknown persons carrying some machetes and sticks,” it stated that the operation “was carried out peacefully, without anyone being injured.” The

⁴⁹⁵ C-Libre. May 3, 2011. [Continúa la violación a la libertad de expresión en Honduras: Impunidad y represión el rostro del año 2011](#). [Violation of freedom of expression continues in Honduras: Impunity and repression the face of 2011]; Defenders on Line. April 8, 2011. [Ocho órdenes de captura contra dirigentes y pobladores de Zacate Grande](#). [Eight arrest warrants against leaders and residents of Zacate Grande]

⁴⁹⁶ IACHR. Precautionary Measure MC 115-11. [Medida Cautelar MC 115-11](#). April 18, 2011; Center for Justice and International Law (CEJIL). April 26, 2011. [Comisión Interamericana exige que Honduras proteja a integrantes de radio comunitaria](#). [Inter-American Commission demands Honduras to protect members of community radio station]; Journalists in Spanish (Periodistas en Español). April 27, 2011. [Censura en Honduras: La CIDH pide protección para los periodistas de La Voz de Zacate Grande](#). [Censorship in Honduras: IACHR requests protection for journalists of La Voz de Zacate Grande]; Reporters Without Borders. June 28, 2011. [Radios comunitarias: voces aún excluidas de la frecuencia radiofónica, señalan RSF y AMARC](#). [Community Radio Broadcasters: voices still excluded from radiofrequencies, according to RSF and AMARC]

⁴⁹⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁹⁸ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 9.

State further maintained that at the time of the eviction, “the radio station had already ceased broadcasting because of a problem with the equipment it was using,” and that “at no time during the execution of the order were they restricted from continuing with their broadcasts.” In this same respect, however, the State underscored that the broadcasts were illegal because the station does not have “a broadcast license issued by the National Telecommunications Council (CONATEL), and does not meet the other legal operating requirements, like having the municipal permits.”⁴⁹⁹

335. The State noted that there was a new allegation that “the defendants re-entered the property [...] which resulted in the filing of another complaint by the prosecutor’s office on March 31, 2011 for the offense of contempt.” The defendants were again granted supervised pretrial release.⁵⁰⁰

336. Finally, the State addressed “the alleged intimidating acts and attacks by armed, masked individuals.” It stated that those individuals were on-site investigative technicians from the National Bureau of Criminal Investigation (DNIC) who were at the property “to conduct the inspections requested by the prosecutor’s office,” and that they were met by individuals armed with “sticks, rocks, and machetes” who proceeded to intimidate, assault, and threaten the investigators. The information received indicates that in order to avoid a confrontation, they left the scene “after conducting the proceedings that had been ordered.”⁵⁰¹

337. To date, the IACHR does not know whether the radio station has continued to operate, and it is closely following the complaints that the eviction and seizure of the station are aimed at preventing it from continuing to air critical reports and expressions regarding matters of public interest in the region.

338. Furthermore, the IACHR received information about acts of harassment and threats to force the community radio station *Faluma Bimetu (Sweet Coconut)* to suspend broadcasts for 12 days beginning on January 14, 2011. According to the reports, municipal authorities of Tela, assisted by police officers, arrived on January 12, 2011 in the Garifuna community of Triunfo de la Cruz, where the radio station operates out of, to pressure it to appoint certain members to the board of the station, even though the election of board members was scheduled for January 28. In light of the refusal of the community to move up the date of the appointment, the members of the municipal delegation threatened to burn down the facilities of the radio station, which had already been destroyed by arsonists a year earlier.⁵⁰² On January 14, the director of radio *Faluma Bimetu*, Alfredo López, was brought before a criminal court in connection with a shooting that had taken place a few days earlier in Triunfo de la Cruz, without any charges being brought against him, much less any evidence being introduced to implicate him. At that same hearing, the charges were dropped due to lack of evidence. When broadcasts were suspended, the workers of the radio station hung a sign at the entrance that said: “Closed temporarily due to insecurity.”*Faluma Bimetu*

⁴⁹⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 9.

⁵⁰⁰ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

⁵⁰¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

⁵⁰² *Faluma Bimetu* and Garifuna community have maintained their opposition to real estate development projects in the Atlantic region of Honduras.

resumed broadcasts on January 26.⁵⁰³ Lastly, on April 7, 2011, unidentified individuals set Alfredo Lopez' house on fire, and as of this date, the outcome of the investigation is unknown.⁵⁰⁴ The IACHR requested information from the State of Honduras on January 18, regarding these incidents.

339. The State indicated with respect to the incident at the community radio station *Faluma Bimetu* that a complaint had reportedly been filed before the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage "against unknown persons for the offense of harm to the Community of Triunfo de la Cruz." The Honduran State reported that "the local Prosecutor's Office in Tela conducted several investigative proceedings that subsequently led to the filing of a complaint on February 18, 2001 against unknown persons for the offenses of aggravated robbery and arson." In the initial hearing of April 14, 2011 "the complaint alleging aggravated robbery was dismissed without prejudice, and the complaint alleging arson was dismissed with prejudice." In this respect, the State indicated that "the investigations are ongoing." In addition, with respect to the fire at Mr. Alfredo López's house, the State specified that "Various proceedings have been conducted, including the taking of statements from the victims, the performance of a visual inspection, and the compilation of a photo album of the damages. A report was also requested from the Tela Fire Department for purposes of determining the cause of the fire. It has not yet been possible to identify the perpetrators."⁵⁰⁵

340. According to the information provided, on January 5, 2011, alleged members of the Electric Measuring Service of Honduras (SEMEH) entered the offices of the Civic Council of People's and Indigenous Organizations (COPINH) in the city of La Esperanza and turned off the electricity, preventing the community radio stations *Guarajambala* and *La Voz Lenca* from broadcasting. According to the affected individuals, the purpose of the cutting of the electricity was to prevent these radio stations from continuing to broadcast, as retaliation for the critical content of their broadcasts. Additionally, the members of the SEMEH made death threats against them.⁵⁰⁶

⁵⁰³ Radio Tierra. January 17, 2011. [Cesan las transmisiones de la radio comunitaria garífuna Faluma Bimetu "Coco Dulce" ante el incremento de amenazas y hostigamiento](#). [Garifuna Faluma Bimetu radio broadcasts halted as a result of increased threats and harassment]; Journalists in Spanish. January 19, 2011. [Radio Faluma Bimetu se apaga ante la amenaza criminal](#). [Radio Faluma Bimetu goes silent due to threat of crime]; World Association of Community Broadcasters (AMARC). February 1, 2011. [La emisora comunitaria Radio Faluma Bimetu reinuda sus transmisiones bajo una gran tensión](#). [Community radio broadcaster Faluma Bimetu resumes broadcasts under heightened tension]; AMARC/RSF/IFEX. February 3, 2011. [Emisora comunitaria reanuda sus transmisiones bajo una gran tensión](#). [Community radio broadcaster resumes broadcasts under heightened tension]

⁵⁰⁴ Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición](#). [Honduras: Attack against owner of opposition broadcaster thwarted]; Afro Legacy (Legado Afro.) April 12, 2011. [Honduras: Incendian casa de integrante de radio comunitaria Faluma Bimetu \(Coco Dulce\)](#). [Honduras: house of member of community radio broadcaster Faluma Bimetu (sweet coconut) set ablaze]; RSF/AMARC/IFEX. April 13, 2011. [Las radios comunitarias siguen siendo presas de grandes dificultades por el simple hecho de existir](#). [Community radio broadcasters in big trouble for the simple fact of existing]

⁵⁰⁵ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras." p. 10.

⁵⁰⁶ IACHR. Special Rapporteurship for Freedom of Expression. January 11, 2011. Press Release R1/11. [Relatoría Especial manifiesta su preocupación por hostigamiento de radios comunitarias en Honduras](#). [The Office of the Special Rapporteur expresses its concern over the recent acts of harassment sustained by several community radio broadcasters in Honduras]; World Association of Community Broadcasters (AMARC). March 17, 2011. [Integrantes de radios comunitarias reciben amenazas de muerte de miembros de empresa privada contratada por el Estado hondureño](#). [Members of community radio stations receive death threats from members of private company hired by the Honduran State]; Foodfirst Information and Action Network (FIAN). January 5, 2011. [Denuncia pública urgente: Consejo Cívico de Organizaciones Populares e Indígenas de Honduras COPINH](#). [Urgent public denouncement: Civic Council of People's Organizations of Honduras (COPINH)]; AMARC/IFEX. January 5, 2011. [Integrantes de radios comunitarias reciben amenazas de muerte](#). [Members of community radio stations receive death threats]

341. The Honduran State indicated that “on January 6, 2011, the Office of the Public Prosecutor filed a complaint alleging the offense of threats” against two SEMEH employees. After the arraignment and the initial hearing, an incarceration order was issued against both defendants on February 1, 2011. They filed a motion for appeal that is still pending. The State stressed that “SEMEH is a private company in charge of measuring the electric power services of all consumers in the country, and it shuts off the power of individuals or legal entities that are delinquent in payment for services.” According to the State, “It was proven before the Office of the Public Prosecutor that COPINH was behind in its payment, and that is why its power was cut.” The State indicated that it assumes that “the members of COPINH were opposed to the power shut-off, and that gave rise to a dispute with the SEMEH employees.” It underscored that “the members of COPINH have not demonstrated interest in continuing with the case.”⁵⁰⁷

342. Information has been received about several assaults on Honduran journalists, indicating that on March 25, 2011, police officers fired tear gas bombs at *Canal 36-Cholusat* reporter Richard Casulá, and cameraman Salvador Sandoval, as they were covering the police response to the educators’ demonstration in Tegucigalpa. Sandoval was wounded in the face and Casulá suffered from gas inhalation poisoning.⁵⁰⁸ The State asserted that several proceedings have been conducted with respect to these events; nevertheless, “to date it has not been possible to identify the officers.”⁵⁰⁹ According to the information received, on March 22, 2011, the Police also assaulted journalist Lidieth Díaz, cameraman Rodolfo Sierra, of *Canal 36-Cholusat*, and the director of *Radio Globo*, David Romero, while they were in conversation with a group of professors.⁵¹⁰ The State of Honduras reported that “The Office of the Public Prosecutor filed a complaint against five police officers alleging the offense of abuse of authority.” However, the presiding Court issued an order of incarceration against one of the officers, and dismissed the complaint with prejudice in the case of the other four officers. The Office of the Public Prosecutor appealed the dismissal with prejudice on June 27, 2011, but the court affirmed the lower court’s decision, “and therefore the Office of the Public Prosecutor filed a writ of *amparo* [petition for a constitutional remedy], which is pending.”⁵¹¹

343. In a separate incident, according to reports, on March 21, 2011, police agents fired tear gas bombs and rubber bullets at journalist Sandra Maribel Sánchez, director of *Radio Gualcho*, and *Globo TV* cameramen Uriel Rodríguez, as they were covering the forced removal of teachers in

⁵⁰⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” pp. 10-11.

⁵⁰⁸ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Special Rapporteur expresses concern over assaults against communicators in Honduras]; Reporters Without Borders. March 28, 2011. [Honduras: La policía hiere a dos periodistas que cubrían una manifestación](#). [Honduras: Police wound two journalists covering demonstration]; C-Libre. March 25, 2011. [Periodistas víctimas de represión policial](#). [Journalists victims of police crackdown]

⁵⁰⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵¹⁰ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Special Rapporteur expresses concern over assaults against communicators in Honduras]; C-Libre. March 23, 2011. [Policía Nacional atenta contra la vida de los periodistas David Romero y Lidieth Díaz](#). [National Police Attempt against the Lives of journalists David Romero and Lidieth Díaz]; Reporters Without Borders. March 28, 2011. [Un periodista herido y otro intoxicado denuncian un ataque de la policía al margen de las manifestaciones del magisterio](#). [One wounded journalist wounded and another poisoned denounce an police attack on the margin of teachers’ demonstration]

⁵¹¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

Tegucigalpa.⁵¹² The State reported that “The Office of the Public Prosecutor filed a complaint against a police officer alleging the offense of abuse of authority”; an initial hearing has yet to be held in the case.⁵¹³ On March 30, 2011, *Radio Progreso* correspondent Pedro López was detained for four hours by police agents in Potrerillos, Department of Cortés, as he reported on a protest demonstration in the context of the nationwide work stoppage.⁵¹⁴ That same day, a bullet wounded journalist David Corea Arteaga of the *Centro de Noticias de Colón* in the jaw, as he reported on the forced removal of demonstrators by the Police and the Army.⁵¹⁵

344. On May 5, 2011, reporters Silvia Ardón of *Radio Uno* and Noel Flores of *Globo TV*, as well as the cameraman of that station, Uriel Rodríguez, were assaulted by policemen in San Pedro Sula as they tried to obtain information on a group of individuals being held in custody at the police station, for participating in a demonstration that was broken up with tear gas. According to the information provided to this Commission, the policemen pushed the communicators and prevented them from doing their job as journalists.⁵¹⁶ The State indicated that these acts have not been reported to the Office of the Public Prosecutor, and “requests that those individuals file the appropriate complaint in order to be able to open an investigation into the matter.”⁵¹⁷ One day later, cameraman Uriel Rodríguez was beaten again and his equipment was destroyed by agents of the National Police. According to the reports, Rodríguez was wounded in the head and his equipment was destroyed while he was filming the violent breakup of a student demonstration. The communicator was taken to one hospital where he was supposed to have been stitched up but was then transferred to a different hospital. Government officials had gone to the original hospital he was supposed to go to with the intention of arresting him.⁵¹⁸ With respect to these events, the State reported that on November 18, 2011 “the Office of the Public Prosecutor filed a complaint alleging the offense of torture.”⁵¹⁹

⁵¹² IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Office of the Special Rapporteur Expresses Concern over Attacks Against Media in Honduras]; Revistazo. March 22, 2011. [Policías atacan sin reparo a periodista de Choluteca Sur](#). [Police attack journalist of Choluteca Sur without qualms]; C-Libre. March 22, 2011. [Policía Nacional agrede a periodista y camarógrafo](#). [National Police assault journalist and cameraman]

⁵¹³ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵¹⁴ Radio Progreso. March 30, 2011. [Detienen a corresponsal de Radio Progreso en Potrerillos](#). [Correspondent of Radio Progreso Arrested in Potrerillos]; Revistazo. March 30, 2011. [Sin razón justificada, policía aprehende durante varias horas a periodista de Radio Progreso](#). [Without any justifiable reason, police hold Radio Progreso Journalist for hours]

⁵¹⁵ Committee to Protect Journalists (CPJ). April 6, 2011. [El CPJ alarmado por ola de ataques contra la prensa en Honduras](#). [CPJ alarmed by wave of attacks against the press in Honduras]; C-Libre. April 1, 2011. [Periodista en herido de bala disparada por el Ejército Nacional](#). [Woman Journalist wounded by bullet shot from National Army]

⁵¹⁶ C-Libre. May 5, 2011. [Periodista es agredida mientras intentaba recabar información de manifestantes detenidos](#). [Journalist is assaulted while attempting to gather information about detained demonstrators]; World Association of Community Broadcasters (AMARC). May 6, 2011. Reporters Without Borders. May 9, 2011. [Nuevas agresiones contra los medios de oposición en San Pedro Sula tras el atentado contra un director de radio](#). [More assaults against the opposition media in San Pedro Sula after attempt on life of radio station director]

⁵¹⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵¹⁸ C-Libre. May 6, 2011. [Periodista Gráfico de Globo TV es brutalmente golpeado por la Policía Nacional](#). [Graphic journalist from Globo TV is brutally beaten by National Police]; YouTube. May 9, 2011. [Golpiza a camarógrafo de Globo TV Uriel Gudiel Rodríguez](#). [Globo TV cameraman Uriel Gudiel Rodríguez beaten]

⁵¹⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

345. The IACHR has been informed of the armed robbery of journalist Edgardo Antonio Escoto Amador on September 22, 2011, in colonia Las Brisas of the city of Comayagüela. Edgardo Antonio Escoto Amador, also known as “el Washo”, is the coordinator of the news program “Temas y Debates” and the interview program “Entrevista con el Washo [interview with el Washo]” on Canal 13 in Tegucigalpa. According to reports, two men on a motorcycle intercepted him while he was heading to his car; they held him up at gunpoint with wide gauge firearms and grabbed his laptop, which contained confidential information. Prior to the hold up and harassment, the journalist had reported on matters connected to the Armed Forces and the *coup d’état* and, according to the information obtained, had been the target of threats.⁵²⁰

346. The ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Threats

347. During 2011, information was received regarding several acts of violence, intimidation and harassment of journalists. On July 17, 2011, journalist Roberto García Fúnez, correspondent of *Radio Progreso* in the municipality of Arizona, Department de Atlántida, was allegedly physically assaulted by the mayor of Arizona at a public gathering and, consequently, the journalist brought a suit for physical assault against the mayor on July 25. According to reports, the journalist and his family were the targets of threats and acts of harassment.⁵²¹ According to the information, on September 14, 2011, journalist Mario Castro Rodríguez, director of the news program “El látigo contra la corrupción” [‘the whip against corruption’] on Globo TV, received death threats via text messages.⁵²² Journalists Esdras Amado López and Mario Rolando Suazo, of Canal 36-Cholusat, received death threats after disclosing information on alleged irregularities in the Honduran Catholic church. According to the account, the journalists began to receive threatening text messages on their cell phones, after revealing on July 12, the resignation letter of a priest in which alleged anomalies committed by the religious institution were mentioned.⁵²³ As of September 8, journalist Mario Castro Rodríguez, director of the news program “El látigo de la corrupción”,

⁵²⁰ C-Libre. September 23, 2011. [Hombres armados intimidan a periodista](#). [Armed men intimidate journalists]; World Association of Community Broadcasters (AMARC). September 26, 2011. [RSF pide protección a los periodistas Mario Castro y Edgardo Antonio Escoto](#). [RSF requests protection for journalists Mario Castro and Edgardo Antonio Escoto]; Knight Center for Journalism in the Americas. September 28, 2011. [Honduran journalist attacked; laptop with coup d’état information stolen](#).

⁵²¹ C-Libre/IFEX. July 27, 2011. [Corresponsal de Radio Progreso amenazado de muerte](#). [Radio Progreso Correspondent receives death threat]; Canadian Journalists for Free Expression (CJFE). August 24, 2011. [Honduran Journalist Facing Death Threats](#).

⁵²² International Freedom of Expression Exchange (IFEX). September 14. [Director de noticiario recibe amenazas de muerte](#). [Director of news program receives death threats]; C-Libre. September 14, 2011. [Director del noticiario “El látigo contra la corrupción” recibe amenazas de muerte](#). [Director of news program “El látigo contra la corrupción” receives death threats]; World Association of Community Broadcasters (AMARC). September 26, 2011. [RSF pide protección a los periodistas Mario Castro y Edgardo Antonio Escoto](#). [RSF request protection for journalists Mario Castro and Edgardo Antonio Escoto]

⁵²³ El Libertador. July 14, 2011. [Amenazas de muerte a periodistas Mario Rolando Suazo y Esdras Amado López de Canal 36](#). [Death threats against Canal 36 journalists Mario Rolando Suazo and Esdras Amado Lopez]; C-Libre. July 18, 2011. [Amenazan de muerte a periodistas de Canal 36](#). [Canal 36 journalists receive death threats]

which is broadcast on Canal Globo TV in Tegucigalpa, received threats on several occasions via text messages to his cell phone.⁵²⁴

348. The Special Rapporteurship reiterates that, according to the ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

D. Indirect censorship, subsequent punishment and limitations on access to public information

349. The IACHR has received information on National Telecommunications Commission (CONATEL)-issued resolution NRO03/11 of February 24, 2011, which suspends the permitting and licensing of radio electric frequencies for Low Power FM (LPFM) Stations operating in the range of 88 to 108 MHz. CONATEL establishes that the use of those frequencies can only be authorized as repeaters for operators who have a frequency in another range. The decision would affect a group of community radio broadcasters that could not gain any access to other powers or frequencies because the only procedure to obtain them is through a bidding process.⁵²⁵ Based on the information received, this resolution came about despite the commitments accepted by the Honduran State at the United Nations Human Rights Council Universal Periodic Review in November 2010, under which Honduras made a commitment to “generating a debate in the National Congress and civil society with a view to harmonizing the regulatory framework of the Telecommunications Sector Law and ensuring that it is *[sic]* line with the international human rights conventions and standards, in particular with regard to the levels of public, private and community broadcasting.”⁵²⁶

350. In this respect, the Honduran State maintained that Resolution NRO03/11 “is based on technical considerations” relating to the saturation of the radio spectrum in the 88-108MHz band, specifically for the stations that use frequency modulation (FM). This is because “in the more populated zones or areas of the country there is no availability of radio spectrum frequencies in that frequency range.” According to the State, that situation resulted in CONATEL authorizing “low power radio frequencies within the country to cover those zones that were not covered by regular power radio broadcasting stations.” The State maintained that these provisions have given rise to “obstacles to the development and implementation of new channeling schemes and new broadcasting zones made possible by the new technologies,” and that the new resolution aims to “prevent greater problems for the future planning of channeling schemes and of service areas for

⁵²⁴ The messages, which were sent repeatedly, were text such as: “It is great that they kill you pigs;” “Better to bring you all down;” “Old scoundrel let them kill you,” “ha, ha, ha they’re killing those dumb guys, ass hole,” Reporters Without Borders. September 28, 2011. [RSF pide protección para los periodistas Mario Castro y Edgardo Escoto](#). [RSF requests protection for journalists Mario Castro and Edgardo Escoto]; C-Libre. September 14, 2011. [Director del noticiario “El látigo contra la corrupción” recibe amenazas de muerte](#). [Director of news program “El látigo contra la corrupción” receives threats]

⁵²⁵ National Telecommunications Council. February 24, 2011. [Resolución NRO02/11](#), published in the Gazette of the Republic of Honduras on April 5, 2011; World Community Broadcasters Association (AMARC)/IFEX. February 4, 2011. [El gobierno emite resolución para impedir acceso a frecuencias de radio en baja potencia](#). [Government issues resolution to prevent access to low power radiofrequencies]; C-Libre. February 4, 2011. [CONATEL pretende negar la apertura a nuevas radios comunitarias](#). [CONATEL attempts to deny the opening of new community radio stations]

⁵²⁶ UN. Human Rights Council. November 15, 2010. [Proyecto de Informe del Grupo de Trabajo sobre el Examen Periódico Universal: Honduras](#). [Draft Report of the Working Group on the Universal Periodic Review: Honduras]. Para. 85b.

sound broadcasting services.”⁵²⁷ Nevertheless, the IACHR notes that in the information provided, the State did not make reference to any difficulty that this resolution imposes upon community radio stations, in the sense that they would not be able to access other powers and frequencies through procedures other than financial bidding.

351. Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR holds that: “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

352. In accordance with Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR: “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

353. According to the information we received, on September 23, 2011, the National Congress denied the digital magazine *Revistazo.com* information on non-governmental organizations, churches and foundations that had received money from the State during the *de facto* government of Roberto Micheletti, from June 28, 2009 to January 27, 2010. Congress limited its response to stating that it had information available on the requested subject as of 2010, but did not have information from 2008 to 2009. *Revistazo* filed an administrative appeal for review with the Institute of Access to Public Information, which as of the date of completion of this report had not ruled on the appeal.⁵²⁸

354. The 4th Principle of the Declaration of Principles on Freedom of Expression establishes: “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

16. Jamaica

355. The Office of the Special Rapporteur learned that a report from the Joint Select Committee for the consideration and revision of libel laws in Jamaica was approved by the House of

⁵²⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 12.

⁵²⁸ *Revistazo*. September 23, 2011. [Gobierno Nacional Niega Información Pública e irrespeto la Ley de Transparencia](#). [National Government Denies Public Information and Breaks the Law of Transparency]; C-Libre. September 28, 2011. [Congreso Nacional niega información sobre organizaciones que recibieron dinero durante el golpe](#). [National Congress denies information on organizations that received money during the coup]

Representatives on January 25, 2011, and by the Senate on April 8, 2011. According to the information received, the report was forwarded to the Chief Parliamentary Counsel for the drafting of the bill, which must be signed by the cabinet before being returned to the House of Representatives.⁵²⁹ The report of the Joint Select Committee recommended, among other things, to eliminate criminal libel, including for publications that could be considered blasphemous, obscene or seditious, with the understanding that international standards establish that no person can be imprisoned for expressing his or her self; to eliminate the distinction between libel and slander and replace it with a single civil action of defamatory publication; to reduce the statutory limitations period for an action of defamation from six years as of its publication to two; to replace the defense of justification with the defense of *exceptio veritatis* - that is, that the person being sued for defamation shall be acquitted of the charges when that person can allege and prove that the facts contained in the publication are in large part or completely true; and to create the defense of innocent dissemination to protect the media that within reasonable limits have in good faith reproduced the content of other publications that could be defamatory.⁵³⁰ According to the information received, on November 22 a bill was submitted to the House of Representatives that would implement the report of the joint Select Committee.⁵³¹ As of the publication deadline of this Annual Report, the passage of these reforms was still pending.

356. In the same sense, on October 26, 2010, the Prime Minister of Jamaica, Bruce Golding, reiterated before the Press Association of Jamaica his commitment to protecting freedom of the press and expressed his interest in pushing for changes to the Defamation Act, which have become bogged down.⁵³² According to the information, the Prime Minister also insisted on the need for the media to establish a "media council" to process complaints from members of the public whose reputation may have been damaged by "unjustified" reports in the media. The Press Association of Jamaica responded that it will continue in its efforts to establish a media complaints council to receive complaints from the public on the media.⁵³³

357. The Office of the Special Rapporteur views positively the steps taken by the State of Jamaica toward reforming its laws on defamation and recalls the Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that "The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved

⁵²⁹ Jamaica Information Service (JIS). January 27, 2011. *House approves committee report on libel laws*. Available at: <http://www.jis.gov.jm/news/122-parliament/26623-house-approves-committee-report-on-libel-laws>; Jamaica Information Service (JIS). April 11, 2011. *Senate approves Report on Review of Libel Laws*. Available at: <http://www.jis.gov.jm/news/122-parliament/27371-senate-approves-committee-report-on-review-of-libel-laws>; Inform's Blog. The International Forum for Responsible Media Blog. January 30, 2011. *Libel Reform in Jamaica- Joint Select Committee Report Approved*. Available at: <http://inform.wordpress.com/2011/01/30/libel-reform-in-jamaica-%E2%80%93-joint-select-committee-report-approved/>

⁵³⁰ Houses of Parliament of Jamaica. December 2010. *Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica's Defamation Law*. Available at: http://www.japarliament.gov.jm/attachments/540_Report%20of%20the%20Joint%20Select%20Committee%20To%20Consider%20and%20Report%20on%20the%20Report%20on%20the%20Review%20of%20Jamaica's%20Defamation%20Law.pdf; Government of Jamaica. Office of the Prime Minister. *Debate on Reform of Libel Laws Begin... Media has Role in Democratic Society- PM Golding*. Available at: http://www.opm.gov.jm/news_and_public_affairs/debate_on_reform_of_libel_laws_beginmedia_has_role_in_democratic_society_pm

⁵³¹ Jamaica Gleaner. November 24, 2011. "New Libel Bill Tabled in House". Available at: <http://jamaica-gleaner.com/gleaner/20111124/lead/lead5.html>. Carib101.com

⁵³² The Press Association of Jamaica. October 26, 2010. *PM reaffirms commitment to Press Freedom*. Available at: <http://pressassociationjamaica.org/pm-reaffirms-commitment-to-press-freedom/>

⁵³³ The Press Association of Jamaica. October 26, 2010. *PM reaffirms commitment to Press Freedom*. Available at: <http://pressassociationjamaica.org/pm-reaffirms-commitment-to-press-freedom/>

in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

358. According to the information received, on April 14, 2011, the Joint Select Committee created by Parliament to examine how the Access to Information Act of 2002 was operating submitted its recommendations to Parliament for strengthening the law and improving its effectiveness. According to reports, in addition to the significant progress made, the law has shown certain weaknesses in its application. Among the recommendations issued by the committee is the need to empower the Access to Information Unit - ATI Unit - as a statutory body with significant authority to monitor the performance of government agencies in complying with the contents of the Act; the application of the public interest test to justify the rejection of requests for access to information; and the separation of the Appeal Tribunal from the Access to Information Unit, such that it is more independent and has a prerogative to carry out the investigations and inquiries necessary to resolve challenges to first instance rulings on access to information beyond its already established authority to review the requested documents. However, the committee came out against the proposal to establish a time period in which that Appeal Tribunal must issue its rulings.⁵³⁴ The same committee proposed that the Official Secret Act of 1911 be repealed. Currently, that Act can block public officials from revealing basic information in the public interest. The former Prime Minister, Bruce Golding, expressed publicly his desire for the Official Secrets Act to be repealed.⁵³⁵

359. The Office of the Special Rapporteur views positively the State’s efforts to strengthen and improve effectiveness of its Access to Information Act. Likewise, it reiterates its concern over the fact that the Official Secrets Act is still in force. In this sense, it reminds that Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

⁵³⁴ Jamaica - Houses of Parliament. October 21, 2010. *Report of the Joint Select Committee to Consider and Report on the Operation of “The Access to Information Act, 2002” Relative to the Review of the Legislation as Provided by the Act.* Available at: http://www.japarliament.gov.jm/attachments/637_Report%20of%20The%20JSC%20to%20Consider%20and%20Report%20on%20Operation%20of%20The%20Access%20to%20Information%20Act,%202002.pdf; Inter-American Press Association (IAPA). October 2011. *Country reports: Caribbean - Jamaica.* Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=47&inford=824&idioma=us; Office of the Prime Minister. April 14, 2011. *Committee Recommends Repealed Official Secrets Act Among Other Changes.* Available at: http://www.opm.gov.jm/news_and_public_affairs/committee_recommends_repeal_of_official_secrets_act_among_other_changes

⁵³⁵ The Gleaner. April 16, 2011. *Official Secrets Act to be Replaced.* Available at: <http://jamaica-gleaner.com/gleaner/20110416/news/news9.html>; Jamaica Observer. April 15, 2011. *Repeal Official Secrets Act!* Available at: <http://www.jamaicaobserver.com/news/Repeal-Official-Secrets-Act>; The Gleaner. April 1, 2011. *House Committee Wants Official Secrets Act Repealed.* Available at: <http://jamaica-gleaner.com/gleaner/20110401/lead/lead7.html>; Office of the Prime Minister. April 14, 2011. *Committee Recommends Repealed Official Secrets Act Among Other Changes.* Available at: http://www.opm.gov.jm/news_and_public_affairs/committee_recommends_repeal_of_official_secrets_act_among_other_changes

17. Mexico

A. Progress

360. The Office of the Special Rapporteur was informed of the decision of the Senate of the Republic on November 29 to eliminate articles 1 and 31 of the Press Crimes Act.⁵³⁶ The articles address, respectively, “attacks on privacy” and the punishments applicable in the event of such infractions.⁵³⁷ According to information received, the initiative was sent by the federal executive branch for publication.⁵³⁸ In its *2010 Special Report on Freedom of Expression in Mexico*, the Office of the Special Rapporteur recommended that the Mexican State “Repeal the criminal provisions that penalize expression, including those contained in the 1917 Press Crimes Act.”⁵³⁹ The Office of the Special Rapporteur recognizes this important step forward.

361. The Office of the Special Rapporteur for Freedom of Expression received with satisfaction the ruling of the Supreme Court of Justice of the Nation on Direct *Amparo* 28/2010.⁵⁴⁰ The case arose out of a civil complaint submitted over a column published in the magazine *Letras Libres* questioning a collaboration agreement between the newspaper *La Jornada* and a Spanish newspaper and the effect that agreement would have on the editorial stance of *La Jornada*. In a ruling dated November 23, the Supreme Court acquitted the author of the column and *Letras Libres*. Broadly citing inter-American case law on freedom of expression, including the standard of “actual malice.” The Court observed that:

Debate on subjects in the public interest should be uninhibited, robust and open, able to include vehement, caustic and unpleasantly scathing attacks on public personalities, as well as, in general, ideas that could be unwelcome by those receiving them and by public opinion in general, such that ideas that are welcome or seen as inoffensive or indifferent are not the only ones protected. These are the demands of a plural, tolerant and open society without which true democracy cannot exist.

In this regard, although it is true that any individual participating in a public debate in the general interest should refrain from exceeding certain limits - such as respect for reputation and the rights of third parties - that individual is also allowed to employ a certain amount of exaggeration, even provocation - that is, an individual's statements can be somewhat excessive, and it is precisely in expression that can

⁵³⁶ See Press Crimes Act. Available at: http://corteidh.or.cr/docs/medidas/lanacion_se_04.pdf

⁵³⁷ Senate of the Republic. November 29, 2011. *Bulletin-0417 Senate Protects Freedom of Expression*. Available at: http://comunicacion.senado.gob.mx/index.php?option=com_content&view=article&id=2702:boletin-0417-protege-senado-libertad-de-expresion&catid=46:boletin-de-prensa&Itemid=177; El Universal. November 29, 2011. *Senate decriminalizes defamation and libel*. Available at: <http://www.eluniversal.com.mx/notas/812409.html>

⁵³⁸ Senate of the Republic. November 29, 2011. *Bulletin-0417 Senate Protects Freedom of Expression*. Available at: http://comunicacion.senado.gob.mx/index.php?option=com_content&view=article&id=2702:boletin-0417-protege-senado-libertad-de-expresion&catid=46:boletin-de-prensa&Itemid=177; El Universal. November 29, 2011. *Senate decriminalizes defamation and libel*. Available at: <http://www.eluniversal.com.mx/notas/812409.html>

⁵³⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 828. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁵⁴⁰ Supreme Court of Justice of the Nation. Direct *Amparo* 28/2010. November 23, 2011. Available at: http://www.scjn.gob.mx/Primera_Sala/1ra_listas_actasesion/Actasesepub%2020111123.pdf

*offend, shock, disturb, upset, worry or disgust where freedom of expression is most valuable.*⁵⁴¹

362. The Office of the Special Rapporteur also received with satisfaction a ruling of the Supreme Court of Justice of the Nation dated November 30 that ordered the Office of the Attorney General of the Republic (PGR in its Spanish acronym) to turn over the case file on the initial inquiry into the forced disappearance of Mr. Rosendo Radilla Pacheco to a relative of the victim.⁵⁴² The Supreme Court announced the decision,⁵⁴³ however its full text was still not available as of the publication deadline of this report. According to the Supreme Court press release, the court ruled “in observance of the judgment issued by the Inter-American Court of Human Rights⁵⁴⁴ [...] and attending to the case law this Supreme Court of Justice of the Nation,” that:

*Article 14 of the Federal Transparency and Access to Public Government Information Act must be interpreted in the sense that initial investigations into facts that could constitute grave violations of human rights are not confidential, meaning that they are public information, pursuant to the provisions of Article 6 of the Constitution.*⁵⁴⁵

363. In its *2010 Special Report on Freedom of Expression in Mexico*, the Office of the Special Rapporteur called attention to the fact that the PGR had not observed the ruling of the Federal Institute on Access to and Protection of Information (IFAI in its Spanish acronym) in this case.⁵⁴⁶ At that time, the Office of the Special Rapporteur expressed that it:

*recognizes the need to withhold open criminal investigations in order not to affect the investigation and to protect sensitive data. Nevertheless, the Office of the Special Rapporteur considers that delivery of a public version of information on investigations that have been concluded or inactive for years, with due regard for the protection of sensitive data and elements which it can be proven should be withheld to protect other legitimate interests, promotes the public nature of the proceedings and is a guarantee of appropriate inter-departmental and public oversight of the bodies of administration of justice. This is precisely the purpose of the right of access to information.*⁵⁴⁷

⁵⁴¹ Supreme Court of Justice of the Nation. Direct *Amparo* 28/2010. November 23, 2011. Pgs. 71-72. Available at: http://www.scjn.gob.mx/PLENO/Paginas/proyectos_resolucion.aspx

⁵⁴² Supreme Court of Justice of the Nation. November 30, 2011. *Press Release 220/2011: The SCJN protects the daughter of Rosendo Radilla against the PGR's refusal of access to the initial inquiry on the forced disappearance of her father.* Available at: <http://www2.scjn.gob.mx/red/comunicados/>. The Radilla case was also the subject of a judgment of the Inter-American Court. I/A Court H.R. *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment dated November 23, 2009. Series C No. 209.

⁵⁴³ Supreme Court of Justice of the Nation. Direct *Amparo* 28/2010. November 30, 2011. *Press Release 220/2011: The SCJN protects the daughter of Rosendo Radilla against the PGR's refusal of access to the initial inquiry into the forced disappearance of her father.* Available at: <http://www2.scjn.gob.mx/red/comunicados/>

⁵⁴⁴ I/A Court H.R. *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment dated November 23, 2009. Series C No. 209.

⁵⁴⁵ Supreme Court of Justice of the Nation. November 30, 2011. *Press Release 220/2011: The SCJN protects the daughter of Rosendo Radilla against the PGR's refusal of access to the initial inquiry on the forced disappearance of her father.* Available at: <http://www2.scjn.gob.mx/red/comunicados/>

⁵⁴⁶ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Para. 813. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁵⁴⁷ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Para. 814. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

364. The Office of the Special Rapporteur received with satisfaction the news of the ruling to acquit handed down on April 7 by the First Civil Chamber of the Superior Tribunal of Justice of the Federal District to the benefit of weekly newspaper *Contralínea* and its director, Miguel Badillo, reporters Ana Lilia Pérez and Nancy Flores, and cartoonist David Manrique. On January 3, 2011, the 54th Civil Court of the Federal District had found the weekly newspaper and the communicators guilty in first instance of having committed moral damage to the detriment of three oil businessmen who felt offended by the contents of a series of reports published in *Contralínea* on their participation in allegedly irregular business deals with State oil company Petróleos Mexicanos (PEMEX). Among other aspects, the judgment of the Superior Tribunal establishes that the journalists only have the duty to carry out a reasonable investigation into the facts they publish; that they can only be punished if the nonexistence of sources or an intent to damage the persons in question is demonstrated and that they do not have the obligation (as judicial authorities do) to provide formally generated evidence; in addition, the judgment holds that the threshold for the protection of the moral reputation of the businessmen who voluntarily do business with the State is lower, as they are public figures participating in matters of public interest.⁵⁴⁸

365. The Office of the Special Rapporteur takes note of the ruling of the Federal Institute on Access to Information (IFAI) to order the Center for Investigation and National Security (CISEN), a State intelligence agency, to turn over information on the number of people who have died in clashes between criminal groups or between criminal groups and State forces between years 2000 and 2010. The information must be broken down by month and identify whether those who died were government functionaries or not and to which institution they belonged. Initially, the CISEN had alleged that it did not have the information and remitted the petitioner to other State entities and a State database on homicides, with information from 2006 to 2010. According to the information received, the IFAI requested the CISEN to do an exhaustive search of its archives to locate the information requested from the period 2000-2010 and turn it over in an electronic format.⁵⁴⁹

366. The Office of the Special Rapporteur highlights the fact that the Second Chamber of the Supreme Court of Justice of the Nation ruled on February 2 - for reasons of "interest and importance" - to hear a case on the Secretary of Health's refusal to place public advertising with community radio broadcaster *La Voladora Radio*, from the Amecameca municipality in Mexico state. The Secretary of Health had alleged that the broadcaster did not meet its standards of broad distribution and coverage for its messages, while the radio station and its legal representatives argue that the broadcaster serves a poor and vulnerable population and that the refusal to place advertising contravenes the obligations to respect and promote freedom of expression and the right

⁵⁴⁸ The ruling of the Superior Tribunal modified the first instance ruling, which had found that matters related with Pemex were not in the public interest. The first ruling also found the cartoonist's work offensive and banned the communicators from addressing the subject further. Mexican Commission for the Defense and Promotion of Human Rights. April 15, 2011. *First Civil Chamber of the TSJ of the DF* [in the Spanish acronyms] *acquits Contralínea journalists of moral damages*. Available at: http://www.cmdpdh.org/index.php?option=com_content&view=article&id=339%3Aprimera-sala-civil-del-tsj-del-df-absolvio-de-dano-moral-a-periodistas-del-semanario-contralinea&catid=37%3Acomunicados&Itemid=162&lang=en; Article 19. April 19, 2011. *Article 19 welcomes court review benefiting the right to freedom of expression*. Available at: http://ifex.org/mexico/2011/04/19/reconsideracion_a_favor/es/; El Sol de México. April 15, 2011. *Ruling to acquit for Contralínea journalists*. Available at: <http://www.misionpolitica.com/hoy/3614-sentencia-absolutoria-a-periodistas-del-semanario-contralinea>; Revista Contralínea. February 13, 2011. *The Contralínea case*. Available at: <http://contralinea.info/archivo-revista/index.php/2011/02/13/el-caso-contralinea/>

⁵⁴⁹ Federal Institute on Access to and Protection of Information (IFAI). March 23, 2011. Case File 145/11. Pgs. 64 *et seq*. Available at: <http://www.ifai.org.mx/Sesiones/Consulta>. Cf. El Universal. March 24, 2011. *CISEN ordered to report on narco deaths*. Available at: <http://www.eluniversal.com.mx/notas/753961.html>; Notimex. March 23, 2011. *CISEN must turn over information on deaths caused by organized crime*. Available at: http://www.cronica.com.mx/nota.php?id_nota=568176

to inform, guaranteed in the Mexican Constitution. The matter reached the Supreme Court of Justice after the Ninth District Court on administrative matters of the Federal District denied the radio station's *amparo* petition in August of 2010.⁵⁵⁰ On July 13, the Second Chamber of the Supreme Court of Justice of the Nation granted the *amparo* to La Voladora Radio on finding that the Secretary of Health's refusal to place a reasonable amount of government advertising with a community radio broadcaster was a violation of freedom of expression and the right to be informed. According to the ruling, the Secretary of Health's decision was based on measures of restriction lacking reasonableness, as they favored media outlets based generally on their broadcast range and not their real coverage in different regions and communities throughout the country. According to the judgment, there could be special cases in which broadcasters with a national reach are not ideal, as when a community speaks an indigenous language or the geographic landscape makes signal reception difficult.⁵⁵¹

367. In another very similar ruling, the First Chamber of the Supreme Court of Justice of the Nation ruled on August 24 to grant the *amparo* requested by community broadcaster *Radio Nandía*. As with *La Voladora Radio*, *Radio Nandía* submitted an *amparo* petition in response to the Secretary of Health of the State of Mexico's refusal to place government advertising with it, demanding the petition be granted by the Supreme Court to the benefit of the radio station.⁵⁵²

368. The Office of the Special Rapporteur observes that on March 24, more than 50 Mexican media outlets signed an agreement on coverage of the violence in order to protect journalists and avoid being used as instruments of propaganda by organized crime. The document establishes objectives, guiding principles, and common editorial standards and, among other provisions, proposes guaranteeing the safety of the reporters covering issues related with violence and insecurity through joint coverage, avoiding filing reports from the most violent areas, and not placing bylines on news items on subjects related to organized crime. Among other points, it also calls for encouraging citizen participation and complaints in the fight against crime, noninterference in combating crime, protecting victims and minors, and the creation of a citizen body for monitoring the media to prepare regular reports on the degree to which the media have followed the terms of the agreement.⁵⁵³

⁵⁵⁰ World Association of Community Broadcasters (AMARC). February 4, 2011. *Supreme Court agrees to hear case on government advertising for community radio stations*. Available at: <http://legislaciones.item.org.uy/index?q=node/2254>; La Voladora Radio. February 4, 2011. *SCJN agrees to hear case on government advertising for community radio stations*. Available at: <http://lavoladora.net/?p=220>

⁵⁵¹ Supreme Court of Justice of the Nation. July 13, 2011. *Amparo under review 248-2011*. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/11002480.002.doc>; El Universo. July 13, 2011. *SCJN rules in favor of community radio station and against Ministry of Health*. Available at: <http://www.eluniversal.com.mx/notas/779158.html>; Supreme Court of Justice of the Nation. No. 125/2011, July 13, 2011. *Unconstitutional, Secretary of Health's refusal to place government advertising for fiscal year 2010 with community radio broadcaster*. Available at: <http://www2.scjn.gob.mx/comunica2prensa/comunicado.asp?id=2113>; Jornada UNAM. July 14, 2011. *Community radio station granted amparo against denial of advertising*. Available at: <http://www.jornada.unam.mx/2011/07/14/politica/022n1pol>; Litiga OLE. July 18, 2011. *Amparo for La Voladora opens way to regulation of placement of government advertising*. Available at: http://www.litigaole.org.mx/web/web/MICROSITIO_LA_VOLADORA.html

⁵⁵² Supreme Court of Justice of the Nation. August 24, 2011. *Amparo under review 531-2011*. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/11005310.002.doc>; World Association of Community Broadcasters (AMARC). August 24, 2011. *Press Release: Second SCJN ruling in favor of government advertising for community radio stations*. Available at: <http://www.amarcmexico.org/?p=8>; Etcétera. August 24, 2011. *Second SCJN ruling in favor of government advertising for community radio stations*. Available at: <http://www.etcetera.com.mx/articulo.php?articulo=8874>

⁵⁵³ Mexicodeacuerdo.org. March 24, 2011. *Agreement on Media Coverage of the Violence*. Available at: <http://www.mexicodeacuerdo.org/acuerdo.pdf>; WRadio. March 23, 2011. *Media directors sign editorial agreement*. Available at: <http://www.wradio.com.mx/nota.aspx?id=1443936>; El Economista. March 24. *Standards unified in response to the violence*. Available at: <http://eleconomista.com.mx/sociedad/2011/03/24/unifican-criterios-ante-violencia>

369. The Office of the Special Rapporteur views positively the creation of a Public Prosecutor's Office for the Investigation of Crimes of Social Relevance in Oaxaca State with the purpose of investigating more than 400 crimes with political motives, among them the deaths of more than 20 people murdered during a protest against the state government in 2006, in which the American journalist Bradley Will also died.⁵⁵⁴ The independent American journalist died after being shot while filming the disturbances. The only person accused of the crime against the communicator, an activists who was participating in the protests, was acquitted of all responsibility by a federal court.⁵⁵⁵

370. The Office of the Special Rapporteur learned of the August 28 arrest of an individual accused of the murder of journalist José Luis Romero.⁵⁵⁶ Romero, who was also working for news radio program *Línea Directa*, disappeared in December 2009 and his lifeless body was found in Los Mochis, Sinaloa State, on January 16, 2010.⁵⁵⁷ According to the information received, the captured individual, Gilberto Plascencia Beltrán, belonged to the criminal group Los Mazatlecos and had turned over the names of other persons who participated in Romero's kidnapping and murder. For its part, the Sinaloa Journalists Association and the Sinaloa and Association of Communicators had demanded that the authorities provide evidence of the suspect's guilt.⁵⁵⁸

B. Murders and disappearances

371. According to the information that has been provided to the Office of the Special Rapporteur, at least eight journalists and two media workers were killed in 2011 under circumstances in which a link between the crime and the exercise of their profession could not be ruled out. Likewise, the Office of the Special Rapporteur was informed of the disappearance of two journalists and the murder of two possible bloggers, allegedly by organized crime. The Office of the Special Rapporteur also received information on multiple attacks, harassment, kidnappings and other acts of violence. As indicated in its 2010 Special Report on Freedom of Expression in Mexico,⁵⁵⁹ the

⁵⁵⁴ Governor of Oaxaca State. March 9, 2011. *Gabino Cué signs decree creating the Public Prosecutor's Office for the Investigation Crimes of Social Relevance*. Available at: <http://www.oaxaca.gob.mx/?p=3432>; Milenio. March 9, 2011. *Cué creates Public Prosecutor's Office for the Investigation Crimes of Social Relevance*. Available at: <http://www.milenio.com/node/666033>; Associated Press/The Washington Post. March 9, 2011. *Mexican investigators reopen Oaxaca death cases*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/09/AR2011030905434.html>

⁵⁵⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Paras. 659-665. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf; El Universal. February 18, 2010. *Judge orders the only individual accused of Will's death be freed*. Available at: <http://www.eluniversal.com.mx/primer/34454.html>; La Crónica de Hoy. February 18, 2010. *Federal court orders individual accused of murdering Brad Will released*. Available at: http://www.cronica.com.mx/nota.php?id_notas=488722

⁵⁵⁶ Knight Center for Journalism in the Americas. September 1, 2011. *Suspect captured in 2009 killing of Mexican journalist*. Available at: <http://knightcenter.utexas.edu/en/blog/suspect-captured-2009-killing-mexican-journalist>; Debate. August 31, 2011. *Individual accused of the death of José Luis Romero captured*. Available at: <http://www.debate.com.mx/eldebate/Articulos/ArticuloGeneral.asp?IdArt=11258307&IdCat=12302>

⁵⁵⁷ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 546. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁵⁵⁸ Knight Center for Journalism in the Americas. September 1, 2011. *Suspect captured in 2009 killing of Mexican journalist*. Available at: <http://knightcenter.utexas.edu/en/blog/suspect-captured-2009-killing-mexican-journalist>; Debate. August 31, 2011. *Individual accused of the death of José Luis Romero captured*. Available at: <http://www.debate.com.mx/eldebate/Articulos/ArticuloGeneral.asp?IdArt=11258307&IdCat=12302>

⁵⁵⁹ See IACHR. Office of the Special Rapporteur for Freedom of Expression. *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II Doc. 5. March 7, 2011. Available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=230>

Office of the Special Rapporteur confirms that the alarming problem of violence against journalists continues to worsen. Likewise, the Office of the Special Rapporteur emphasizes that attacks on communicators constitute the most radical form of censorship, as they prevent absolutely both the right of journalists to circulate ideas or information and the right of all persons to receive that information, meaning that it affects not only the victim and the victim's relatives but also society as a whole.

372. The Office of the Special Rapporteur received information on an armed attack on the television station owned by Grupo Multimedios Laguna and on radio broadcaster Radiorama Laguna on February 9 in the state of Coahuila, Mexico, which resulted in the death of an engineer at the television station. According to the information received, several masked and armed individuals entered Radiorama's broadcasting facilities, where they beat two people and damaged equipment. Later, they broke into the facilities of Grupo Multimedios, where they murdered engineer Rodolfo Ochoa Moreno when he tried to make a phone call for help.⁵⁶⁰

373. On March 25, journalist Luis Ruiz Carrillo, with the newspaper *La Prensa* in Coahuila, - accompanied by the host of a Televisa program José Luis Cerda Meléndez and one of his relatives Juan Roberto Gómez Meléndez - was found murdered in Monterrey. According to the information received by the Office of the Special Rapporteur, the three men had been kidnapped the previous night after Cerda Meléndez left work at the television channel.⁵⁶¹

374. The Office of the Special Rapporteur learned of a crime committed against journalist Noel López Olguín. According to the information available, on March 8 the reporter was traveling to the area of Soteapan, in the south of Veracruz, and never arrived to his destination. On Sunday, May 29, the police captured an alleged drug trafficker who confessed to having murdered the journalist. With the information obtained, the authorities exhumed the body that had been buried in a secret grave on the Malacate cooperative farm in the Jáltipan municipality. On June 1, the relatives of the journalist identified the remains. Noel López Olguín was a columnist with the newspaper *La Verdad de Jáltipan* and contributed to several media outlets, including *Horizonte* and *Noticias de Acayucan*. According to the information, the journalist regularly denounced and harshly criticized acts of local corruption.⁵⁶²

⁵⁶⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 14, 2011. Press Release R11/11. *Special Rapporteur Condemns Armed Attack on Media Outlets in Mexico*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=833&IID=1>; Committee to Protect Journalists (CPJ). February 11, 2011. *Broadcast offices attacked in Mexico; engineer killed*. Available at: <http://cpj.org/2011/02/broadcast-offices-attacked-in-mexico-engineer-kill.php>; Milenio. February 10, 2011. *Multimedios engineer killed*. Available at: <http://www.milenio.com/node/642609>

⁵⁶¹ The body of José Luis Cerda Meléndez was found the morning of March 25 at the side of a highway with hands tied, blindfolded, and a gunshot wound to the head. Near the body, the murderers - presumably the Gulf cartel - had written a sign on the wall that said, "Stop cooperating with the Zetas. Sincerely CDG Greetings to Architect No. 1" While the police were guarding the scene of the crime, armed men arrived and took Cerda's body. The body appeared several hours later in a place where people had been invited the day before to a march for peace. The remains of Ruiz Carrillo and Gómez Meléndez were found that morning in another place in the city. IACHR. Office of the Special Rapporteur for Freedom of Expression. March 29, 2011. Press Release R26/11. *Office of the Special Rapporteur Condemns Crime Against Two Media Workers in Mexico*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=834&IID=1>; Reporters Without Borders/IFEX. March 29, 2011. *Double murder in Nuevo León; Guerrero newspaper suspends publication following threats*. Available at: http://www.ifex.org/mexico/2011/03/29/double_murder/; Europa Press. March 25, 2011. *Body of José Luis Cerda Meléndez, 'La Gata,' found*. Available at: <http://www.europapress.es/tv/noticia-hallan-cadaver-jose-luis-cerda-melendez-gata-20110325193102.html>

⁵⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. June 7, 2011. Press Release R54/11. *Office of the Special Rapporteur Condemns Murder of Journalist who disappeared in Mexico in March*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=850&IID=1>; EFE News Service. June 3, 2011. *Body of Mexican journalist missing since March found*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5gtYihdtDshi3WQOaZ1aK-XNTCEwA?docId=1542797>; Committee to Protect Journalists (CPJ). June 2, 2011. *Missing journalist found dead in Mexico*. Available at:

375. The Office of the Special Rapporteur received information on the murder of journalist Miguel Ángel López Velasco, assistant director of *Notiver*, together with his son Misael López Solana, a journalist at the same newspaper, and his wife, Agustina Solana, in Veracruz state on June 20. All three were murdered in their house while they slept. Miguel Ángel López Velasco, also known in his column as "Milo Vela," specialized in issues of security, politics and narco trafficking for *Notiver*, a widely circulated newspaper in Veracruz. He had received threats over his professional activity.⁵⁶³ In its 2007 Annual Report, the Office of the Special Rapporteur documented that on May 3 of that year, a human head was dropped outside the headquarters of *Notiver* with a note saying "this is a gift for the journalists, more heads are going to roll and Milo Vela knows it well."⁵⁶⁴ With regard to the triple murder, the governor of the state of Veracruz ordered the investigation be sped up and for the Office of the State Prosecutor to carry out the investigation, with the assistance of experts from the Office of the Attorney General of the Republic.⁵⁶⁵ Likewise, the national human rights Commission opened an *ex officio* complaint to launch an investigation.⁵⁶⁶

376. On July 26, journalist Yolanda Ordaz, also with *Notiver*, appeared dead in Boca del Río, Veracruz. The journalist disappeared on July 24, shortly after telling her family members that she was going to cover a story. Her body was found decapitated behind the offices of the newspaper *Imagen del Golfo* and nearby radio broadcaster MVS. According to the available information, Yolanda Ordaz was working as a journalist covering the police beat for *Notiver* in Veracruz.⁵⁶⁷ According to reports, the head of the state Office of the Public Prosecutor in charge of

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<http://www.cpj.org/2011/06/missing-journalist-found-dead-in-mexico.php>; Reporters Without Borders. March 25, 2011. *Police find body of Veracruz state reporter missing since March*. Available at: http://en.rsf.org/mexico-police-find-body-of-veracruz-state-03-06-2011_40401.html; PEN Center USA. March 29, 2011. *Mexico. Journalist Disappears in Veracruz*. Available at: <http://www.penusa.org/ran-1311-mexico>; Inter-American Press Association (IAPA). April 2011. *Information by Country: Mexico*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&inford=810&idioma=us

⁵⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 23, 2011. Press Release R61/11. *Office of the Special Rapporteur Deplores Murders of Journalist and his Family in Mexico*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=852&IID=1>; Committee to Protect Journalists (CPJ). June 20, 2011. *Miguel Ángel López Velasco*. Available at: <http://www.cpj.org/killed/2011/miguel-angel-lopez-velasco.php>; La Jornada. June 21, 2011. *Journalist Miguel Ángel López Velasco killed in Veracruz*. Available at: <http://www.jornada.unam.mx/2011/06/21/politica/009n1pol>; La Jornada. June 22, 2011. *Journalist Miguel Ángel López Velasco, his wife and son buried in Veracruz*. Available at: <http://www.jornada.unam.mx/2011/06/22/politica/010n1pol>

⁵⁶⁴ IACHR. Annual Report 2007. OEA/Ser.L/V/II.131. Doc. 34 ver. 1. March 8, 2008. Vol. II. *Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 246. Pg. 113. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf. Cf. La Jornada. May 4, 2007. *Ten murdered in seven different localities; human head found in Veracruz*. Available at: <http://www.jornada.unam.mx/2007/05/04/index.php?section=politica&article=003n1pol>

⁵⁶⁵ La Jornada. June 20, 2011. *Journalist Miguel Ángel López Velasco killed in Veracruz*. Available at: <http://www.jornada.unam.mx/2011/06/21/politica/009n1pol>; Radio Fórmula. June 20, 2011. *Duarte saddened by crime against journalist and family in Veracruz*. Available at: <http://www.radioformula.com.mx/notas.asp?ldn=180289>; La Jornada. June 21, 2011. *Criminals will not be permitted to act in impunity: Javier Duarte*. Available at: <http://www.jornada.unam.mx/2011/06/21/politica/009n2pol>

⁵⁶⁶ National Human Rights Committee (CNDH in its Spanish acronym). June 20, 2011. CGCP/149/11. *From 2000 to date: 70 journalists murdered*. Available at: <http://www.cndh.org.mx/node/37>

⁵⁶⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 29, 2011. Press Release R81/11. *Office of the Special Rapporteur Condemns Murder of a Journalist in Mexico*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=859&IID=1>; La Jornada. July 27, 2011. *Journalist Yolanda Ordaz with newspaper *Notiver* found murdered*. Available at: <http://www.jornada.unam.mx/2011/07/27/politica/012n1pol>; BBC. July 27, 2011. *Mexico. Missing journalist Yolanda Ordaz found killed*. Available at: <http://www.bbc.co.uk/news/world-latin-america-14305364>; Reporters Without Borders. July 27, 2011. *Journalist Yolanda Ordaz de la Cruz found murdered*. Available at: <http://www.rsf-es.org/news/mexico-asesinada-la-periodista-yolanda-ordaz-de-la-cruz/>

the investigation indicated that a sign was found along with the body apparently linking the journalist with criminal groups.⁵⁶⁸ The newspaper *Notiver* requested the resignation of the Attorney General of Justice of Veracruz and demanded a public apology after the official made premature public statements dismissing any link between the crime and the journalist's work. He resigned in the first week of October.⁵⁶⁹ The National Human Rights Commission opened an *ex officio* complaint to launch an investigation into the murder.⁵⁷⁰

377. The Office of the Special Rapporteur learned of the kidnapping and murder of Humberto Millán, journalist with Radio Fórmula, in Sinaloa, Mexico. According to the information received, Humberto Millán was kidnapped by several armed men on the morning of August 24 in Culiacán, Sinaloa. On the morning of August 25, the journalist was found dead with a bullet wound to the head. In addition to his work with *Radio Fórmula*, he edited the digital newspaper *A Discusión*, where he specialized in local and national politics. The journalist, with more than 30 years experience in the media, was known for his critical commentaries and denunciations of alleged acts of corruption.⁵⁷¹ On August 24, the date on which the journalist disappeared, the National Human Rights Commission opened a complaint case file to investigate the facts and asked the Secretary of the Government to implement precautionary or protective measures to the benefit of the relatives of the journalist, who had received threats.⁵⁷²

378. On September 24, the editor of the newspaper *Primera Hora*, María Elizabeth Macías, appeared dead in Nuevo Laredo, Tamaulipas state. According to information received, the communicator was found decapitated and a message was found with her remains accusing her of denouncing the actions of criminal groups on her blog. The information received by the Office of the Special Rapporteur also indicates that two weeks prior, on September 13, 2011, the bodies of two young people were found in the city of the Nuevo Laredo showing signs of torture. The bodies were accompanied by a message warning people not to report crimes on social networks.⁵⁷³ According to

⁵⁶⁸ Reporters Without Borders. July 27, 2011. *Mexico: Journalist Yolanda Ordaz de la Cruz found murdered*. Available at: <http://www.rsf-es.org/news/mexico-asesinada-la-periodista-yolanda-ordaz-de-la-cruz/>

⁵⁶⁹ Proceso. July 27, 2011. *Notiver demands prosecutor resign*. Available at: <http://www.proceso.com.mx/?p=277160>; E-Consulta October 7, 2011. *Veracruz prosecutor resigns after more bodies turn up*. Available at: http://e-consulta.com/portal/index.php?option=com_k2&view=item&id=18829:renuncia-procurador-de-veracruz-tras-aparici%C3%B3n-de-m%C3%A1s-cad%C3%A1veres&Itemid=332; CNN. October 7. *Veracruz prosecutor resigns after a wave of violence*. Available at: <http://www.cnn.mx/nacional/2011/10/07/el-procurador-de-veracruz-presenta-su-renuncia-tras-una-ola-de-violencia>

⁵⁷⁰ National Human Rights Committee (CNDH in its Spanish acronym). July 26, 2011. CGCP/181/11. *Death of journalist in Veracruz investigated*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_181.pdf

⁵⁷¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 26, 2011. Press Release R95/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Murder of a Journalist in Sinaloa, Mexico*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=863&IID=1>; El Mundo. August 26, 2011. *Body of Mexican journalist Humberto Millán found a day after his kidnapping*. Available at: <http://www.elmundo.es/america/2011/08/25/mexico/1314294557.html>; El País. August 26, 2011. *Another journalist murdered in Mexico*. Available at: <http://www.elpais.com/articulo/internacional/Asesinan/periodista/Mexico/elpepuint/20110826elpepuint/1/Tes>; CNN. August 26, 2011. *Justice demanded in murder of journalist Humberto Millán in Sinaloa*. Available at: <http://mexico.cnn.com/nacional/2011/08/26/exigen-justicia-por-la-muerte-del-periodista-humberto-millan-en-sinaloa>

⁵⁷² National Human Rights Committee (CNDH in its Spanish acronym). August 30, 2011. CGCP/214/11. *Measures of protection for the family of the journalist*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_214.pdf

⁵⁷³ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 27, 2011. Press Release R105/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Three Murders in Nuevo Laredo, Mexico*. Available at: <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=871&IID=1>; Office of the Attorney General of Justice of Tamaulipas State. September 24, 2011. *Press release from the Office of the Attorney General of Justice of the State*. Available at: <http://tamaulipas.gob.mx/2011/09/comunicado-de-la-procuraduria-general-de-justicia-del-estado-11/>

what was reported to this Office of the Special Rapporteur, as of the publication deadline of this report, the bodies of the two young people had not been identified.⁵⁷⁴

379. The Office of the Special Rapporteur for Freedom of Expression received information concerning the disappearance of journalist Marco Antonio López Ortiz, information chief for newspaper *Novedades Acapulco* in the state of Guerrero on June 7, 2011. According to the information received by the Office of the Special Rapporteur, the journalist was abducted by a group of unknown individuals in the city of Acapulco on the night of June 7. His car was found abandoned at the place of the kidnapping and since then there has been no news on his whereabouts.⁵⁷⁵ According to information, the Office of the Attorney General of Justice of the State of Guerrero has launched an investigation into these facts.⁵⁷⁶ The Commission for the Defense of Human Rights of the State of Guerrero issued press releases on the case and the National Human Rights Commission also open a case file and visited the offices of *Novedades Acapulco* to look into the journalist's disappearance. However, the whereabouts of the journalist are still unknown.⁵⁷⁷

380. The Office of the Special Rapporteur received information on the disappearance of journalist Manuel Gabriel Fonseca, a reporter with newspaper *El Mañanero* in the municipality of Acayucan, Veracruz state. Fonseca, who was covering the police beat, was last seen leaving work on September 19.⁵⁷⁸

381. The Office of the Special Rapporteur urges the Mexican authorities to investigate the motive for these crimes, prosecute and properly punish the perpetrators, and guarantee fair reparations for the victim's relatives. It is essential that the necessary measures be taken to prevent these acts of violence from being repeated, and to counter their serious impact on all of society's right to freedom of expression.

...continuation

Vanguardia. September 26, 2011. *Murder of María Elizabeth Macías "clear threat" to net surfers.* Available at: <http://www.vanguardia.com.mx/asesinatodemariaelizabethmaciasclaramenazaacibernautasai-1107853.html>; CNN.

September 25, 2011. *Editor of the newspaper found decapitated in Tamaulipas.* Available at: <http://mexico.cnn.com/nacional/2011/09/25/la-editora-de-un-periodico-fue-encontrada-decapitada-en-tamaulipas>

⁵⁷⁴ Telephone interview with nongovernmental organization Article 19. October 31, 2011.

⁵⁷⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 16, 2011. Press Release R58/11. *Office of the Special Rapporteur Expresses Concern regarding Disappearance of Journalist in Mexico.* Available at: <http://cidh.org/relatoria/showarticle.asp?artID=851&IID=1>; Acapulco. June 10, 2011. *Media worried over disappearance of journalist López Ortiz.* Available at: <http://www.aca-novenet.com.mx/acapulco/preocupa-a-medios-desaparicion-del-periodista-lopez-ortiz>

⁵⁷⁶ La Jornada de Guerrero. June 26, 2011. *Protests continue demanding López Ortiz be returned.* Available at: <http://www.lajornadaguerrero.com.mx/2011/06/26/index.php?section=sociedad&article=005n2soc>; La Jornada de Guerrero. July 8, 2011. *One month after the disappearance of López Ortiz, the PGJE still doesn't have results.* Available at: <http://www.lajornadaguerrero.com.mx/2011/07/08/index.php?section=politica&article=004n1pol>

⁵⁷⁷ National Human Rights Committee (CNDH in its Spanish acronym). June 15, 2011. CGCP/144/11. *Case file opened over disappeared journalist.* Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_144.pdf; Commission for the Defense of Human Rights of the State of Guerrero. June 9, 2011. *Human Rights CONDEMNS the disappearance of Novedades Acapulco journalist.* Available at: http://www.coddehumgro.org.mx/coddehumgro2011/index.php?option=com_content&view=article&id=390%3Aderechos-humanos-reprueba-la-desaparicion-del-informador-de-novedades-acapulco&catid=38%3Aboletines-2011&Itemid=1; La Jornada Guerrero. July 8, 2011. *One month after the disappearance of López Ortiz, the PGJE still does not have results.* Available at: <http://www.lajornadaguerrero.com.mx/2011/07/08/index.php?section=politica&article=004n1pol>

⁵⁷⁸ Committee to Protect Journalists (CPJ). September 29, 2011. *Mexican police reporter missing in Veracruz.* Available at: <http://www.cpj.org/2011/09/police-reporter-missing-in-mexico.php>; Milenio. September 22, 2011. *Disappearance of journalist in Veracruz denounced.* Available at: <http://www.milenio.com/cdb/doc/noticias2011/9eff4ec8bb8b82a2677854bfebf8e728>

382. The Office of the Special Rapporteur recalls that Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Attacks on media and journalists

383. The Office of the Special Rapporteur received information on various attacks on communicators during this period. On December 18, 2010, armed men fired at least 15 times at the residence of journalist José Rosario Olán Hernández, with the newspaper *Verdicto Popular*, in Cárdenas, Tabasco, while he was there with his family. According to reports, *Verdicto Popular* regularly publishes denouncements of alleged acts of corruption in the state of Tabasco.⁵⁷⁹ On January 9, government security personnel of the state of Mexico attacked a correspondent with the newspaper *La Jornada*, Misael Habana de los Santos, and independent photographer Bernadino Hernández while they were reporting on the collapse of a metal structure during a political rally that caused the death close to 20 people. According to reports, the security personnel tried to prevent press from approaching the place and capturing images, in doing so seizing Habana's camera and threatening Hernández with a firearm.⁵⁸⁰

384. In the early morning hours of January 11, unknown individuals threw a fragmentation grenade and fired at a building owned by newspaper *El Norte* in Monterrey, Nuevo León. The attack caused damage to glass and the newspaper's façade. The attack took place hours after presumed criminal groups threatened local media covering news related to the war against narco trafficking.⁵⁸¹ The newspaper was attacked again with a grenade on March 31, though no one was injured and no major damage was caused.⁵⁸²

385. The Office of the Special Rapporteur was informed that reporter Alejandro Caballero and photographer Hugo Camarillo, with the newspaper *Plaza de Armas*, were attacked on January 6

⁵⁷⁹ El Independiente del Sureste. December 19, 2010. *Attack against journalist José Rosario Olán en Cárdenas*. Available at: http://www.elindependiente.mx/independiente/index.php?option=com_content&view=article&id=5447:atentan-contr-el-periodista-jose-rosario-olan-en-cardenas&catid=13:agenda&Itemid=5; International Freedom of Information Exchange (IFEX). December 23, 2010. *Journalist's house, car shot at in Cárdenas, Tabasco*. Available at: http://www.ifex.org/mexico/2010/12/23/olan_hernandez/; El Independiente del Sureste. December 19, 2010. *Open letter sent to journalist José Rosario Olán*. Available at: http://www.elindependiente.mx/independiente/index.php?option=com_content&view=article&id=5448:envia-carta-abierta-el-periodista-jose-rosario-olan&catid=10:salud&Itemid=14

⁵⁸⁰ Center for Journalism and Public Ethics (CEPET). January 10, 2011. *Journalists covering incident during political rally attacked*. Available at: <http://libexmexico.wordpress.com/2011/01/10/agreden-a-periodistas-que-cubrian-incidente-durante-acto-politico/>; La Jornada. February 12, 2011. *Habana submits criminal complaint to prosecutor against Añorve and Peña Nieto for attacks*. Available at: <http://www.lajornadaguerrero.com.mx/2011/02/12/index.php?section=politica&article=002n1pol>

⁵⁸¹ El Universal. January 11, 2011. *Grenade attack reported against newspaper El Norte*. Available at: <http://www.eluniversal.com.mx/notas/736371.html>; EFE News Service. January 11, 2011. *Newspaper in north of Mexico attacked with grenades and assault rifles*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5iK92U5AkbeSIH4tScZiYb-WsrpuQ?docId=1440861>

⁵⁸² Vanguardia. April 1, 2011. *Monterrey newspaper attacked*. Available at: <http://www.vanguardia.com.mx/atacanunperiodicoenmonterrey-687384.html>; EFE News Service. April 1, 2011. *Grenade explodes outside newspaper in north of Mexico without causing injuries*. Available at: <http://www.google.com/hostednews/epa/article/ALeqM5jIU4xCDoxZmpNbvoj-2ErcORkFWA?docId=1499310>

by security guards of the local delegation of the Mexican Institute of Social Security (IMSS in its Spanish acronym) in Queretaro while trying to interview nurses to refute an official statement on these worker's salaries. According to reports, in the evening, an official with the Internal Communications Department had gone to the newspaper's offices to demand to be informed of the content of the news item that was to be published.⁵⁸³ In follow up to the incident, the Querétaro State Human Rights Commission opened an *ex officio* complaint the following day.⁵⁸⁴ On January 20, presumed employees of union leader Martín Esparza beat journalists Javier Vega and cameraman Juan Carlos Martínez, of *Milenio Televisión*, and seized and destroyed a camera and cellular phones while the two were recording images outside the property of the union leader in Tetepango, Hidalgo. The Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE in its Spanish acronym) ordered forensics experts and agents of the Federal Investigation Agency (AFI) be sent to collect evidence.⁵⁸⁵ Elsewhere, the Office of the Special Rapporteur learned of an attack suffered on February 1 by Juan César Martínez, a cameraman with *Televisa Monterrey*, while he was covering a confrontation between members of criminal groups and federal forces in Apodaca, Nuevo León.⁵⁸⁶ On February 28, Julián Ortega, a photographer with daily newspaper *El Imparcial* in Sonora, was physically and verbally attacked by state police officers while photographing the search for an armed gang in the city of Hermosillo. While he was doing his job, three police officers approached him to take away his cameras.⁵⁸⁷ In Saltillo, Coahuila, Milton Martínez, a cameraman with *Televisa*, was beaten, arrested and threatened by officers of the Coahuila Prosecutor's Office on March 4 while he was taking pictures of the destruction caused by a clash between criminals and police forces. The communicator was released hours later. In following up the incident, the National Human Rights Committee opened an *ex officio* complaint.⁵⁸⁸ On February 15, Gildardo Mota, a journalist with *Radiatorama* and weekly newspaper *La Hora* was wounded by a gunshot to the leg while reporting on a clash between federal police officers and members of the teachers union, close to the Zócalo in the city of Oaxaca where President Felipe

⁵⁸³ Center for Journalism and Public Ethics (CEPET)/IFEX. January 14, 2011. *Employees of IMSS Queretaro attack reporters*. Available at: http://www.ifex.org/mexico/2011/01/14/plaza_de_armas_agreden/es/; El Universal. January 8, 2011. *Employees of IMSS attack reporters*. Available at: <http://www.eluniversal.com.mx/notas/735887.html>

⁵⁸⁴ According to the information, the CEDHQ opened complaint case file CEDH/063/2011/VG. Cf. Querétaro State Human Rights Commission (CEDHQ in its Spanish acronym). January 7, 2011. Press release 001/2011/DCS. *CEDHQ condemns attack on to reporters in Querétaro*. Available at: <http://www.cedhqro.org/archivos/boletines/2011/001-2011.pdf>

⁵⁸⁵ Milenio. January 20, 2011. *PGR launches initial inquiry into damages and theft to the detriment of Milenio*. Available at: <http://www.milenio.com/node/626585>; Telediario. January 20, 2011. *Cameras stolen and reporters with Milenio Televisión attacked outside ranch of Martín Esparza*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/50a22c5f90a91c7060c4a6dba2ab5151>

⁵⁸⁶ Center for Journalism and Public Ethics (CEPET)/IFEX. February 4, 2011. *Federal police beat Televisa Monterrey cameraman and confiscate his equipment*. Available at: http://www.ifex.org/mexico/2011/02/04/televisa_monterrey_agresion/es/; Vanguardia. February 4, 2011. *Federal police beat Televisa Monterrey cameraman*. Available at: <http://www.vanguardia.com.mx/policiasfederalesgolpeanacamargrafodetelevisamonterrey-644847.html>

⁵⁸⁷ El Imparcial. March 1, 2010. *State police officers attack journalist*. Available at: <http://www.elimparcial.com/EdicionEnLinea/Notas/Policiaca/01032011/500228.aspx>; El Portal de la Noticia. March 2, 2011. *Journalists: Who's next?* Available at: http://www.elportaldelanoticia.com/index.php?option=com_content&view=article&id=1850:periodistas-iquien-sigue&catid=26:el-zancudo; Knight Center for Journalism in the Americas. March 2, 2011. *Mexican police attack photographer covering shooting*. Available at: <http://knightcenter.utexas.edu/blog/mexican-police-attack-photographer-covering-shooting>. Cf. National Human Rights Committee (CNDH in its Spanish acronym). March 5, 2011. CGCP/054/11. *CNDH investigates attack on cameraman*. Available at: <http://www.cndh.org.mx/node/37>

⁵⁸⁸ Noticieros Televisa. March 4, 2011. *Shootings reported in Saltillo*. Available at: <http://noticierostelevisa.esmas.com/nacional/265987/reportan-balaceras-saltillo>; Vanguardia. March 9, 2011. *CDHDF requests protection for communicator attacked by the police in Coahuila*. Available at: <http://www.vanguardia.com.mx/pidelacdhdfprotegeracomunicadoragredidoporlapolicia decoahuila-668972.html>; National Human Rights Committee (CNDH). March 5, 2011. CGCP/054/11. *CNDH investigates attack on cameraman*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_054.pdf

Calderón was located. According to the information received by the Office of the Special Rapporteur, photographers Luis Cruz, Hugo Velasco and Jaime García were also slightly injured.⁵⁸⁹

386. The Office of the Special Rapporteur was informed of an attack on the headquarters of television channel Televisa in Piedras Negras, Coahuila state, on January 8. The attack took place when unknown individuals threw at least two fragmentation grenades that did not explode. The grenades were deactivated by members of the Secretary for National Defense in coordination with state and federal police.⁵⁹⁰ According to information received, the Office of the Attorney General of the Republic reported that the Public Ministry of the Federation launched an initial inquiry into who was responsible for the commission of the crime after receiving a report from the State Control, Command, Communications and Computation Center (C-4).⁵⁹¹

387. On February 25, reporter Oswald Alonso Navarro, a correspondent with *Radio Fórmula* and the AP news agency, and Marco Antonio Vallejo Estrada, a publicist with *Radio Fórmula*, were attacked by unidentified armed men in Cuernavaca, Morelos state. According to information received by the Office of the Special Rapporteur, at around 10 PM, three armed men tried to intercept the communicators and make them get out of their vehicle. When the journalists fled, they fired at them with assault rifles, wounding Marco Antonio Vallejo Estrada in the leg.⁵⁹² According to reports, the Mexican Reporters Network announced that the Secretary of Public Security of Morelos state had failed to apply precautionary measures to the benefit of the communicators based on these facts and asked the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE) of the Office of the Attorney General of the Republic to urgently implement the precautionary measures. According to the information, the FEADLE interviewed the communicators, asked the secretary of public security of Morelos state to issue precautionary measures, and took up the case.⁵⁹³ Based on these facts, the National Human Rights Commission opened an *ex officio* investigation.⁵⁹⁴

⁵⁸⁹ Article 19/IFEX. February 16, 2011. *Journalist injured while covering protest in Oaxaca*. Available at: http://www.ifex.org/mexico/2011/02/16/mota_shot/; El Universal. February 15, 2011. *Reporter shot in Oaxaca*. Available at: <http://www.eluniversal.com.mx/notas/745052.html>

⁵⁹⁰ El Universal. January 9, 2011. *Grenades thrown at Piedras Negras Televisa*. Available at: <http://www.eluniversal.com.mx/notas/736083.html>; Vanguardia. December 9, 2011. *Two grenades thrown at television station in Piedras Negras, Coahuila*. Available at: <http://www.vanguardia.com.mx/lanzan2granadasatelevisoraenpiedrasnegrascoahuila-627949.html>; the Public Ministry of the Federation launched initial inquiry AP/PGR/OACH/PN-11/01/DD/2011. Cf. Office of the Attorney General of the Republic (PGR). January 8, 2011. State Bulletin DPE/0036/11. Available at: <http://www.pgr.gob.mx/prensa/2007/delega11/coah080111DPE003611.shtm>

⁵⁹¹ The Public Ministry of the Federation launched initial inquiry AP/PGR/OACH/PN-11/01/DD/2011. Cf. Office of the Attorney General of the Republic (PGR). January 8, 2011. State Bulletin DPE/0036/11. Available at: <http://www.pgr.gob.mx/prensa/2007/delega11/coah080111DPE003611.shtm>

⁵⁹² El Universal. February 26, 2011. *Journalist and publicist attacked in Morelos*. Available at: <http://www.eluniversal.com.mx/notas/747883.html>; Center on Journalism and Public Ethics (CEPET). February 28, 2011. *AP reporter and Radio Fórmula employee fired at in Morelos*. Available at: <http://libxmxico.wordpress.com/2011/03/01/disparan-contra-reportero-y-empleado-de-radio-formula-morelos-denuncian-omision-de-autoridades-locales/>. Cf. National Human Rights Committee (CNDH in its Spanish acronym). February 27, 2011. CGCP/049/11. *CNDH investigates attack on journalist*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_049.pdf

⁵⁹³ El Regional. February 28, 2011. *Authorities fail to address attacks on journalists*. Available at: http://www.elregional.com.mx/index.php?option=com_content&view=article&id=14661:desatienden-autoridades-agresion-a-periodistas&catid=42:local&Itemid=63; El Universal. February 26, 2011. *PGR takes up case of attack on journalist and publicist*. Available at: <http://www.eluniversal.com.mx/notas/747966.html>

⁵⁹⁴ National Human Rights Committee (CNDH in its Spanish acronym). February 27, 2011. CGCP/049/11. *CNDH investigates attack on journalist*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_049.pdf

388. The Office of the Special Rapporteur was informed of the kidnapping of journalists Fabián Antonio Santiago Hernández and Margarito Santiago Pérez, with the newspaper *La Verdad*, which took place on February 25 in the municipality of Jáltipan, Veracruz. Both were abducted close to noon in the center of the municipality and released hours later after an intense police operation in the community that had blocked all exits.⁵⁹⁵ Two days before the abduction, municipal police authorities had threatened the journalists for having published the statements of a municipal police officer denouncing the improper practices of his superiors.⁵⁹⁶

389. On May 30, unidentified individuals threw a grenade at the offices of newspaper *Vanguardia* in Saltillo, Coahuila, at around 11:30 p.m. The attack did not cause any injuries.⁵⁹⁷ Following the attack on *Vanguardia* offices, the Office of the Attorney General of the Republic launched an inquiry.⁵⁹⁸ Likewise, the National Human Rights Commission issued an *ex officio* complaint and requested that precautionary measures be granted for the newspaper's employees.⁵⁹⁹

390. The Office of the Special Rapporteur received information on an attack on journalist Jacobo Elnecavé Luttmann, in Tuxtla Gutiérrez, Chiapas state, on June 19. According to the information received, Elnecavé, the host of one of the news programs of the Sistema Chiapaneco de Radio, Televisión y Cinematografía, was attacked with a blunt object while at an amusement park with friends. The attack caused injuries to his head, face and right shoulder. He was taken to a medical center in Mexico City, where he remained hospitalized for an extended period of time. The CNDH opened a file on the case and ordered precautionary measures to the benefit of the communicator.⁶⁰⁰

391. On August 5, reporter Yuri Galván Quesada with the newspaper *Provincia* in the state of Michoacan was arrested while carrying out research in a health center in the city of Morelia in that state. According to the information received, Galván was looking into whether health

⁵⁹⁵ Diario Xalapa. February 26, 2011. *Reporter and his father freed*. Available at: <http://www.oem.com.mx/diariodexalapa/notas/n1981225.htm>; Coatz Digital. February 25, 2011. *"Kidnapping" of journalists Fabián Antonio Santiago and Margarito Santiago confirmed*. Available at: <http://www.coatzadigital.net/2011/02/confirman-levanton-de-periodistas.html>

⁵⁹⁶ State Commission for the Defense of Journalists. Veracruz State Government. February 25, 2011. Press Release CEDEP-OM/Bol./No.041/11. *CEDEP demand guarantees for journalist in Jaltipan, Ver., Fabian Antonio Santiago Hernández*. Available at: http://portal.veracruz.gob.mx/pls/portal/docs/PAGE/COMISIONDEFENSAPERIODISTAS/DIFUSION/BOLETINES/NOTA%20DE%20PRENSA_041_CEDEP_FEBRERO_2011.PDF; El Diario del Sur. February 25, 2011. *Journalists kidnapped*. Available at: <http://www.diariodelsur.mx/?p=12075>

⁵⁹⁷ Knight Center for Journalism. May 31, 2011. *Grenade thrown at newspaper offices in the north of Mexico*. Available at: <http://knightcenter.utexas.edu/es/blog/lanzan-granada-contra-diario-en-el-norte-de-mexico>; CNN. May 30, 2011. *Armed men attack newspaper in Coahuila with a grenade*. <http://mexico.cnn.com/nacional/2011/05/30/hombres-armados-atacan-con-una-granada-un-diario-de-coahuila>; El Universal. May 30, 2011. *Grenade thrown at newspaper Vanguardia*. Available at: <http://www.eluniversal.com.mx/notas/768978.html>

⁵⁹⁸ Office of the Attorney General of the Republic. May 30, 2011. AP/PGR/COAH/SALT/AG-IV/DD/217/2011. Available at: <http://www.pgr.gob.mx/prensa/2007/bol11/May/b59111.shtm>

⁵⁹⁹ See National Human Rights Committee (CNDH in its Spanish acronym). May 31, 2011. CGCP/12/11. *Protection sought for Vanguardia personnel*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_129.pdf; CNDH. May 30, 2011. CGCP/128/11. *Ex officio complaint over attack on newspaper*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_128.pdf

⁶⁰⁰ Milenio. June 24, 2011. *PGJE investigating attack on journalist Jacobo Elnecavé*. Available at: <http://www.milenio.com/cdb/doc/noticias2011/0431a64440f070c6e5fc79c12fe5fdfe>; El Universal. June 30, 2011. *CNDH doing inquiry into attack on journalist in Chiapas*. Available at: <http://www.eluniversal.com.mx/estados/80987.html>; Milenio. July 6, 2011. *Government collaborating in case of Jacobo Elnecavé*. Available at: <http://impreso.milenio.com/node/8987412>

services that by law should be free were being charged for when the director of the center called the police, who arrested the journalist and transferred her to a municipal detention center.⁶⁰¹

392. The Office of the Special Rapporteur received information on telephone threats and website sabotage against the newspaper *El Sol del Sur* in Tampico, Tamaulipas state, during the month of September. The information also indicates that reporter Mario Alberto Segura, from the same newspaper, was subjected to aggression on September 21. Segura had been filming the police of the city of Madero, Tamaulipas, as they violently evicted street vendors when he was beaten and arrested. According to the information received, a criminal complaint was filed before the FEADLE regarding the facts.⁶⁰²

393. In October of 2011, journalists Norma Madero Jiménez and Agustín Ambríz, with the magazine *Luces del Siglo* in the state of Quintana Roo, filed a criminal complaint of harassment before the Office of the Special Prosecutor on Crimes Committed against Freedom of Expression (FEADLE). Madero and Ambríz are the owner and director, respectively, of the magazine and have been threatened, harassed, and physically attacked in connection with the article "How big was the debt he left?" bearing Ambríz' byline, about the financial debt left by the administration of a former state governor. The information received indicates that the journalists filed criminal complaints upon receiving several threatening e-mails per day detailing their activities. They have been moved to Mexico City for security reasons.⁶⁰³

394. On November 1, in Ciudad Juárez, Chihuahua, several journalists including Christian Torres from the newspaper *El Diario* and Ramiro Escobar from Radio Net were attacked and arrested by municipal police officers while covering a demonstration against violence and organize crime. According to the information received, both journalists have filed criminal complaints for abuse of authority and damages against the police officers responsible. The authorities have indicated that they will impose administrative sanctions on the police officials who caused the journalists' injuries.⁶⁰⁴

⁶⁰¹ Knight Center for Journalism in the Americas. August 6, 2011. Mexican *journalist alleges illegal arrest*. Available at: <http://knightcenter.utexas.edu/blog/mexican-journalist-alleges-illegal-arrest>; El Sol de Morelia. August 6, 2011. *Inquiry over restriction on freedom of expression*. Available at: <http://www.oem.com.mx/elsoldemorelia/notas/n2175813.htm>

⁶⁰² Knight Center for Journalism in the Americas. October 12, 2011. *Reporter and newspaper in Mexico accuse mayor of ordering attacks*. Available at: <http://knightcenter.utexas.edu/blog/reporter-and-newspaper-mexico-accuse-mayor-ordering-attacks>. Metro Noticias. September 22, 2011. *Reporter denounces Madero mayor*. Available at: <http://www.metronoticias.com.mx/nota.cgi?id=62529>; El Sol de Sur. September 21, 2011. Press Release from *El Sol del Sur*. Available at: <http://www.elsoldelsurtampico.com/denuncia-agresion-a-el-sol-del-sur/>

⁶⁰³ National Center for Social Communication (CENCOS/IFEX). October 20, 2011. *Quintana Roo journalists harassed for revealing information on poor management of public money*. Available at: <http://www.ifex.org/mexico/2011/10/20/luces-del-siglo/es/>; Diario Avanzada. November 9, 2011. *Threats and attacks against Quintana Roo journalists denounced*. Available at: <http://www.diarioavanzada.com.mx/noticia.php?id=81811>; Knight Center for Journalism in the Americas. October 19, 2011. *Cancun Magazine denounces threats and insults from former Mexican governor*. Available at: <http://knightcenter.utexas.edu/es/blog/revista-de-cancun-denuncia-amenazas-e-insultos-de-ex-gobernador-mexicano>

⁶⁰⁴ La Red Noticias. November 1, 2011. *General condemnation of repression of social leaders and attacks on journalists*. Available at: <http://www.larednoticias.com/noticias.cfm?n=69698>; Organización Editorial Mexicana (OEM). November 1, 2011. *Demonstrators beaten and journalists subjected to violence*. Available at: <http://www.oem.com.mx/laprensa/notas/n2291925.htm>; El Diario. November 2, 2011. *The 28 arrested freed on bail*. Available at: <http://www.diario.com.mx/notas.php?f=2011/11/02&id=674b122a5e2f43c485fcd2cf8a64b328>; El Diario. November 3, 2011. *Officers who attacked reporters to be punished: Arcelús*. Available at: <http://www.diario.com.mx/notas.php?f=2011/11/02&id=bdfd9601696cb08def38e417d6d9a5f6>

D. Threats

395. The Office of the Special Rapporteur learned of several cases of threats against journalists that took place since December of 2010. On December 15, 2010, journalist Anabel Hernández alleged in an open letter that there was a plan, allegedly of certain officials with ties to the Secretary of Public Security and the Federal Investigations Agency, to attack her after the publication of her book *The Lords of the Narco* on December 1, 2010.⁶⁰⁵ At her request, the National Human Rights Commission interviewed the journalist, opened a complaint case file and opened an investigation into the facts.⁶⁰⁶ On March 25, an anonymous phone call warned a receptionist at the newspaper *El Sur* in Acapulco that there would be an attack on the newspaper's director, Juan Angulo: "This message is for Juan Angulo. [...] Tomorrow at two in the afternoon, all the innocents should get out of there." As a precautionary measure, on the following day the newspaper's employees did not go to the office and many of them worked from home.⁶⁰⁷ In November of 2010, *El Sur* had been attacked by armed men who entered the building and fired several times.⁶⁰⁸ According to the information received, the newspaper enjoys precautionary measures of protection ordered by the National Human Rights Commission.⁶⁰⁹

396. The Office of the Special Rapporteur was informed of the April 15 arrest and deportation of Italian journalist Giovanni Proietti, a resident of Mexico for 18 years. According to the information received, the communicator had permission to work as a teacher at a university in Chiapas and also wrote a blog for the Italian newspaper *Il Manifesto*. The authorities indicated that he had been deported because he was exercising a profession that was not the one for which he was authorized. Proietti was involved in an incident with President Felipe Calderón during the United Nations Climate Change Conference held in Cancun in December of 2010, where security agents canceled his press credentials for covering the event.⁶¹⁰

397. The Office of the Special Rapporteur learned of new threats against journalist Lydia Cacho received on June 14. According to information received, the journalist was again threatened with torture and death via telephone and e-mail. The journalist, who has alleged that the threats are in retaliation for "revealing the names of traffickers of girls and women," filed a criminal complaint

⁶⁰⁵ Artículo 19/CENCOS. December 16, 2010. *Journalist Anabel Hernández alleges death threats after publishing investigation*. Available at: <http://radioinformaremosmexico.wordpress.com/2010/12/19/la-periodista-anabel-hernandez-denuncia-amenazas-de-muerte-tras-publicar-investigacion/>; Women's Communication and Information (CIMAC). December 16, 2010. *Journalist Anabel Hernández alleges plan for attack on her life*. Available at: <http://www.cimacnoticias.com.mx/site/10121607-Denuncia-periodista.45541.0.html>

⁶⁰⁶ National Human Rights Committee (CNDH in its Spanish acronym). December 1, 2010. CGCP/306/10. *Journalist files complaint*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2010/COM_2010_306.pdf

⁶⁰⁷ Medios Latinos. March 30, 2011. *Periódico Mexicano cierra temporalmente por amenazas*. Available at: <http://www.kas.de/wf/en/221.76/>; Zapateando 2. March 31, 2011. *Cierra el Sur sus oficinas en Acapulco*. Available at: <http://zapateando2.wordpress.com/2011/03/31/cierra-el-sur-sus-oficinas-en-acapulco/>

⁶⁰⁸ See IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 639. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁰⁹ CNDH. December 30, 2009. *CNDH demands respect for journalists' source confidentiality*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2009/COM_2009_173.pdf

⁶¹⁰ Proceso. April 16, 2011. *Italian journalist deported over "incident" with Calderón*. Available at: <http://www.proceso.com.mx/?p=268085>; Knight Center for Journalism in the Americas. April 18, 2011. *Mexico deports critical Italian journalist*. Available at: <http://knightcenter.utexas.edu/blog/mexico-deports-critical-italian-journalist>; Periodistas en Español. April 20, 2011. *Censorship in Mexico: Italian journalist and professor Giovanni Proietti deported*. Available at: <http://www.periodistas-es.org/reporteros/censura-en-mexico-expulsado-al-periodista-y-profesor-italiano-giovanni-proietti>

over the threats and petitioned authorities to provide her with security measures.⁶¹¹ As the Office of the Special Rapporteur has noted, this is not the first time that journalist Lydia Cacho has been subjected to threats or attacks in retaliation for her work.⁶¹² The IACHR granted precautionary measures to the journalist, her family and functionaries with the Comprehensive Women's Care Center (CIAM its Spanish acronym) starting in 2009 based on the death threats she received in connection with her work as a journalist and human rights defender.⁶¹³

E. Obstructions to the disclosure of information

398. The Office of the Special Rapporteur was informed that on March 2, the 12th Court of the Administrative District of the Federal District temporarily suspended the showing of the documentary "Presumed Guilty" in response to the request for a writ of *amparo*.⁶¹⁴ The documentary questions the Mexican judicial system and lays out the proceeding against José Antonio Zúñiga Rodríguez, who was convicted and sentenced to 20 years in prison for the crime of first-degree murder without any clear evidence and despite the existence of testimony placing the defendant elsewhere at the time the crime took place. In April 2008, after 28 months in prison, the Fifth Chamber of the Tribunal of Justice of the Federal District acquitted him for reasonable doubt.⁶¹⁵ The court order to prevent the distribution of the documentary was sought by a person who appeared as a witness in the criminal proceeding in question. Through a restraining order, the first instance judge ordered the documentary's distribution be suspended. However, in response to a writ of complaint and request for clarification from the General Directorate of Radio, Television and Cinematography (RTC), the court removed the suspension but placed a restraining order requiring the documentary to keep the identity of the person who requested the writ of *amparo* confidential.⁶¹⁶ Later, movie theater company Cinépolis filed a writ of *amparo* in favor of the distribution of the film and on May 23, the 12th Multimember Tribunal of the City of Mexico authorized the unrestricted showing of the movie inside Mexico and abroad.⁶¹⁷ In response to a request for information by the Office of the Special Rapporteur submitted on March 4, 2011, the Mexican State responded on March 25, 2011, that the Secretary of Governance authorized and defended showing the documentary and that the Federal Government, in disagreement with the

⁶¹¹ Informador. June 30, 2011. *Journalist Lydia Cacho reveals new death threats*. Available at: <http://www.informador.com.mx/mexico/2011/303497/6/la-periodista-lydia-cacho-revela-nuevas-amenazas-de-muerte.htm>; Noticieros Televisa. June 29, 2011. *Lydia Cacho alleges new death threats against her*. Available at: <http://noticierostelevisa.esmas.com/nacional/304328/denuncia-lydia-cacho-amenazas-muerte-contra>

⁶¹² See IACHR. Office of the Special Rapporteur for Freedom of Expression. *2010 Special Report on Freedom of Expression in Mexico*. OEA/Ser.L/V/II Doc. 5. March 7, 2011. Paras. 170-174. Available at: www.cidh.oas.org/relatoria/ShowDocument.asp?DocumentID=229

⁶¹³ Cf. IACHR. *Lydia Cacho et al. Mexico. Precautionary Measures*. MC 192/09. August 10, 2009. Available at: <http://www.oas.org/es/cidh/defensores/proteccion/cautelares.asp>

⁶¹⁴ Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 2; La Jornada. March 6, 2011. *Presumed Guilty*. Available at: <http://www.jornada.unam.mx/2011/03/06/opinion/a09a1esp>

⁶¹⁵ Proceso. February 18, 2011. *Presumed Guilty: Reasonable doubt*. Available at: <http://www.proceso.com.mx/?p=263507>; CNN. March 4, 2011. *The background of the complaint against the documentary 'Presumed Guilty.'* Available at: <http://m.cnnmexico.com/nacional/2011/03/04/el-trasfondo-de-la-demanda-contra-el-documental-presunto-culpable&pagina=1>

⁶¹⁶ Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 3.

⁶¹⁷ Cinépolis News. May 26, 2011. *"Presumed Guilty" will reach Latin America without censorship*. Available at: <http://www.cinepolisnews.com/2011/05/26/llegara-presunto-culpable-sin-censura-a-latinoamerica/>; La Jornada. March 22, 2011. *Cinépolis appeals ruling on 'Presumed guilty.'* Available at: <http://www.jornada.unam.mx/2011/03/22/politica/022n3pol>

initial court ruling, would exhaust all legal resources to challenge the ruling and defend freedom of expression.⁶¹⁸

399. The Office of the Special Rapporteur learned that a group of individuals identifying themselves as “very influential” tried to prevent the circulation of the newspaper *Novedades* in Quintana Roo on the morning of March 31. According to the information, shortly after midnight several individuals appeared at the newspaper to offer to purchase that day’s full print run, some 45,000 copies. In response to the company’s refusal, men in several trucks and on motorcycles rode through the city for several hours to intimidate the drivers of circulation trucks and the newspaper’s vendors in order to acquire the newspapers. In the end, the unknown group was able to buy close to 90% of the edition. The newspaper denounced the facts before the Human Rights Commission of the State of Quintana Roo, which condemned the restriction on the right to freedom of expression.⁶¹⁹

400. On June 8, journalist Ángeles Mariscal was prevented from doing her job when she tried to cover a public hearing of the former governor of the state of Chiapas. According to the information received, Mariscal - with CNN and *Animal Político* in Chiapas - had her equipment confiscated when she arrived to the hearing. Later, several police officers ordered her to leave the place where the hearing was taking place, which she refused to do without a written order from the judge. When she left the place where the hearing was taking place, Mariscal was intercepted by prison security officials who confiscated her USB memory sticks, her audio recorder, and the memory card from her video camera, all of which were returned half an hour later. During that half an hour, she was held inside the prison.⁶²⁰

401. In the first week of July, online media outlets *Expediente Quintana Roo*, *Cuarto Poder* and *Noticaribe* in the state of Quintana Roo suffered denial of service attacks. As a result of the attack, *Expediente Quintana Roo*, a media outlet based exclusively on the Internet, remained off line for almost 5 days; information was also stolen from the e-mail account of its director. The attack on *Expediente Quintana Roo* took place on the eve of a poll evaluating the first 100 days of the state government.⁶²¹

402. In September, the magazine *Proceso* reported repeated mass purchases of copies the magazine. According to information received, in that month the mass purchase took place in the

⁶¹⁸ Communication dated March 25, 2011, from the State of Mexico to the Office of the Special Rapporteur for Freedom of Expression. OEA-000680. Pg. 4.

⁶¹⁹ The main news items to be published that day addressed the government acquisition of armored patrols, the sentencing of a man accused of corrupting minors to 13 years in prison, the report of a murder in broad daylight in Cancun, and the problems facing a tourism fair in Quintana Roo. Excelsior. March 31, 2011. *Newspaper Novedades de Quintana Roo suffers suppression*. Available at: http://www.excelsior.com.mx/index.php?m=nota&id_nota=726476; Novedades. April 1, 2011. *Suppression of newspaper Novedades de Q. Roo*. Available at: <http://www.novenet.com.mx/portada.php?id=200947>; El Economista. April 1, 2011. *Newspaper Novedades de Quintana Roo censored*. Available at: <http://eleconomista.com.mx/sociedad/2011/04/01/censuran-diario-novedades-quintana-roo>; SIPSE. April 3, 2011. *Censorship of newspaper Novedades de Quintana Roo violates Constitution*. Available at: <http://www.sipse.com/noticias/96156-censura-novedades-quintana-viola-constitucion.html>; SIPSE. April 1, 2011. *Ombudsman rejects suppression of Novedades de Quintana Roo*. Available at: <http://sipse.com/noticias/95976-ombudsman-rechaza-represion-novedades-quintana-.html>

⁶²⁰ Article 19/CENCOS/IFEX. June 20, 2011. *Chiapas reporter prevented from covering public hearing*. Available at: http://www.ifex.org/mexico/2011/06/20/mariscal_obstaculizada/es/; CENCOS/IFEX. June 27, 2011. *Concern over harassment and attacks on journalists in Chiapas*. Available at: http://www.ifex.org/mexico/2011/06/30/mandujano_acoso/es/

⁶²¹ Article 19/IFEX. July 11, 2011. *Cyber attack on three online media outlets in Quintana Roo*. Available at: http://www.ifex.org/mexico/2011/07/14/ataque_cibernetico/es/; Online journalists. July 13, 2011. *Online media in Quintana Roo victims of cyber attacks*. Available at: <http://www.periodistasenlinea.org/modules.php?op=modload&name=News&file=article&sid=19273>

cities of Veracruz, Nuevo Leon, Guanajuato, Durango and Puebla, where unknown individuals appeared at different sales points to purchase, without violence, all the copies in circulation, preventing them from reaching the public. In Veracruz, for example, some 5400 copies of the magazine were purchased. The edition dedicated its cover to the narco trafficking violence in that state.⁶²²

F. Judicial proceedings

403. On May 25, the Second Single Judge Court of the Fourth Circuit, in Monterey, confirmed the sentence of two years in prison for the director of community radio station Tierra y Libertad, Héctor Camero. The communicator was granted a conditional suspension of the prison sentence but ordered to pay a fine equivalent to US \$1,360 dollars and barred from practicing his civil and political rights for - according to the ruling - having used the broadcast spectrum without authorization. According to the information received by the Office of the Special Rapporteur, the proceeding against Camero began in 2008, when officers with the Federal Preventive Police forcibly entered the radio station Tierra y Libertad and confiscated broadcast equipment. In November of 2009, Camero was convicted by a first instance judge. The radio station Tierra y Libertad has provided information in the public interest to low income communities in Monterey since 2002.⁶²³

404. On January 17, José Maza, a member of community radio station Radio Diversidad, was arrested by officers of the Office of the Attorney General of the Republic as part of a criminal proceeding launched when the radio broadcaster was closed in March of 2009 for allegedly operating without the corresponding permits.⁶²⁴ According to information received by the Office of the Special Rapporteur, the communicator had to post bail equivalent to US \$1,800 dollars. Communicators Juan José Hernández and Paula Ochoa also faced accusations on the same grounds.⁶²⁵

405. The Office of the Special Rapporteur insists that laws on radio broadcasting must be adjusted to international standards and must be enforced through the use of proportional administrative penalties, not through the use of criminal law.⁶²⁶

⁶²² Article 19/IFEX. September 28, 2011. *Indirect censorship of the magazine Proceso carried out through mass purchases*. Available at: http://www.ifex.org/mexico/2011/09/28/proceso_compra_masiva/es/; El Mundo. September 17, 2011. *Mass purchase of the Mexican magazine Proceso is denounced in several cities*. Available at: <http://www.elmundo.es/america/2011/09/13/mexico/1315936086.html>

⁶²³ World Association of Community Broadcasters (AMARC). May 28, 2011. *Circuit magistrate upholds conviction of community communicator*. Available at: <http://migracion.amarcMexico.org/?p=69>; El Mercurio Digital. June 7, 2011. *RSF asks for investigation into murder of journalist Noel López*. Available at: <http://www.elmercuriodigital.net/2011/06/rsf-pide-una-investigacion-sobre-el.html>; Article 19. July 13, 2009. *Persecution of community radio stations*. Available at: <http://www.libertad-expresion.org.mx/noticias/persecucion-a-radios-comunitarias/#more-2599>

⁶²⁴ According to reports, he was charged under Article 150 of the General Public Property Act. See General Public Property Act. Published in the Diario Oficial on May 20, 2004. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/267.pdf>

⁶²⁵ World Association of Community Broadcasters (AMARC). January 19, 2011. *Member of community radio station in Veracruz apprehended*. Available at: <http://legislaciones.item.org.uy/index?q=node/2163>; InfoVeracruz. May 28, 2011. *Transmissions of community radio station La Precisa del Paso del Macho canceled by court order*. Available at: <http://www.infoveracruz.com/noticias/2011/05/cancela-transmisiones-radio-comunitaria-la-precisa-de-paso-del-macho-por-una-orden-judicial/>; El Mundo de Córdoba. January 21, 2011. *Communicator posts bail, but is not released*. Available at: <http://www.elmundodecordoba.com/noticias/regional/200-otras-poblaciones/1011848-CR1N3RADIO>

⁶²⁶ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chap. II: *2010 Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

406. The Office of the Special Rapporteur emphasizes that “a restriction imposed on freedom of expression for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.” The Office of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if there are laws establishing discriminatory operating conditions or disproportionate penalties, such as use of criminal law.⁶²⁷

407. Likewise, the Office of the Special Rapporteur observes that it is necessary for the State to recognize the existence of community broadcasters and set aside parts of the spectrum for these media outlets. It must also provide equal conditions for access to licenses that take into account the different nature of noncommercial private media.⁶²⁸ As this office has indicated, States must provide a clear, preestablished, precise and reasonable legal framework that recognizes the special characteristics of community broadcasting and that includes simple and accessible proceedings for obtaining frequencies. These proceedings may not establish severe technology requirements and they must not impose discriminatory or unreasonable limits on funding and range.⁶²⁹ The Office of the Special Rapporteur likewise observes that community broadcasters must operate legally.⁶³⁰

408. The Office of the Special Rapporteur was informed that on May 11, Mexican authorities released without charges Jesús Lemus Barajas, the director and founder of newspaper *EL Tiempo*, in La Piedad, Michoacan, after keeping him in prison for three years on suspicions of having had connections with criminal groups. The journalist was arrested by police officers on May 7, 2008, in Cuerámara, Guanajuato, along with two sources as he was gathering information for a report on drug trafficking routes in the south of the country. In February of 2011, he was convicted and sentenced to 20 years in prison for drug trafficking. However, a second instance court overturned the ruling and acquitted him on finding that there was no evidence connecting him with incidents of drug trafficking or organized crime. Prior to his arrest, Lemus Barajas’ newspaper was critical in its coverage of local news. He had alleged a campaign of harassment by the La Piedad mayorality against the media, unequal placement of government advertising in the municipality, and police intimidation.⁶³¹

⁶²⁷ IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51. December 30, 2009. Volume II: *Annual Report of the Special Rapporteurship for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting). Paras. 40-41. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>

⁶²⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II IACHR/RELE/INF. 3/09. December 30, 2009. Paras. 30, 97. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expression%20FINAL%20PORTADA.pdf>

⁶²⁹ See IACHR. Office of the Special Rapporteur for Freedom of Expression. *Inter-American Framework on the Right to Freedom of Expression*. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009. Para 234, 235. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expression%20FINAL%20PORTADA.pdf>

⁶³⁰ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 757. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶³¹ Months after the journalist’s arrest, a group of soldiers searched his home on July 31, 2008. A similar incident took place again on August 18, 2010. In addition, on August 31, 2009, at least two attorneys defending Jesús Lemus Barajas were shot to death by unknown individuals. Reporters Without Borders. May 17, 2011. *Jesús Lemus Barajas freed after three years of imprisonment without evidence*. Available at: <http://www.rsf-es.org/news/mexico-en-libertad-jesus-lemus-barajas-tras-tres-anos-de-encarcelamiento-sin-pruebas/>; PEN International Writers in Prison Committee. May 18, 2011. *Mexico. Journalist acquitted after three years in prison; fears for safety*. Available at: <http://uyghurpen.org/pen-press-id31.html>; Senate of the Republic of the United Mexican States. May 28, 2008. *Point of agreement on situation of Jesús*

409. Reporter Arcelia García Ortega, with newspaper *Realidades de Nayarit* in the state of Nayarit, had a criminal complaint brought against her for the crimes of defamation, libel and slander by state deputy Omar Reynoso Gallegos over a report she published on July 21. García Ortega published statements issued by another deputy accusing Reynoso Gallegos of embezzlement during his time as state health secretary. The Office of the Special Rapporteur recalls that according to Principle 10 of the Declaration of Principles, “The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest.”⁶³²

410. On August 26, 2011, María de Jesús Bravo Pagola and Gilberto Martínez Vera were arrested on charges of terrorism and sabotage in the city of Veracruz after having spread rumors of attacks by drug trafficking cartel through microblogging site Twitter. The rumors, which turned out to be false, reported attacks on schools. According to the press, they caused “chaos” in the city.⁶³³ On September 1, 2011, in a letter addressed to the Office of the Special Rapporteur, the Secretary of the Government of Veracruz State, Gerardo Buganza Salmerón confirmed these facts and explained that the accused individuals “were not arrested, brought before the authorities, and placed at the disposal of a judge for ‘publishing messages on Twitter and Facebook,’” but for taking “actions against persons, things, or public services that caused alarm, fear, and terror in the population [...] as set forth in the Veracruz State Criminal Code.”⁶³⁴ On September 21, 2011, the government of Veracruz State dropped the charges and freed the two accused individuals.⁶³⁵

411. Available information indicates that the Congress of Veracruz State passed a reform of the State Criminal Code on September 20, 2011, codifying the crime of “disturbance of the public order,” in connection with the aforementioned incident on social network Twitter. According to the information, new Article 373 of the Criminal Code establishes that “those who through any medium falsely affirm the existence of explosive or other devices; attacks with firearms; or chemical, biological, or toxic substances that can cause damage to health, resulting in the disturbance of public order, will be sentenced to a prison term of one to four years and a fine equivalent to 500 to 1000 salary days, depending on the alarm or disturbance of public order effectively caused.” Javier Duarte, the governor of Veracruz State, submitted the initiative on

...continuation

Lemus Barajas, journalist and director of newspaper *El Tiempo*. Available at: <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=8723&lg=60>

⁶³² CENCOS/IFEX. August 26, 2011. *Local deputy files criminal complaint against Nayarit reporter for defamation*. Available at: http://www.ifex.org/mexico/2011/08/29/garcia_ortega_demanda/es/; Periodistas en Español. August 31, 2011. *Journalism in Mexico: Local deputy files criminal complaint against Nayarit reporter for defamation*. Available at: <http://www.periodistas-es.org/libertad-de-expresion/periodismo-en-mexico-diputado-local-denuncia-a-una-reportera-de-nayarit-por-injuria>

⁶³³ Communication from the Secretary of the governments of Veracruz state Gerardo Buganza Salmerón to the Special Rapporteur, September 1, 2011, in possession of the Office of the Special Rapporteur. *El Informador*. August 31, 2011. *Two Twitter users imprisoned in Veracruz on allegations of terrorism*. Available at: <http://www.informador.com.mx/primer/2011/318858/6/encarcelan-en-veracruz-a-dos-twitteros-por-presunto-terrorismo.htm>; *El Economista*. August 30, 2011. *Twitter users imprisoned in Veracruz for “terrorism”*. Available at: <http://eleconomista.com.mx/sociedad/2011/08/30/twitteros-presos-veracruz-terrorismo>

⁶³⁴ Communication from the Secretary of the governments of Veracruz state Gerardo Buganza Salmerón to the Special Rapporteur. September 1, 2011. In possession of the Office of the Special Rapporteur.

⁶³⁵ *El Comercio*. September 21, 2011. *Veracruz government drops charges of “terrorism” against Twitter users*. Available at: http://www.elcomercio.com/mundo/Gobierno-Veracruz-retira-terrorismo-twitteros_0_558544230.html; BBC. September 21, 2011. *Mexico ‘Twitter Terrorism’ Charges Dropped*. Available at: <http://www.bbc.co.uk/news/world-latin-america-15010202>

September 5.⁶³⁶ According to the information, the National Human Rights Commission (CNDH in its Spanish acronym) began analyzing the reform on September 22, 2011, evaluating whether it should move to file an action of unconstitutionality.⁶³⁷ According to information received, a similar proposal was submitted to the Tabasco State Congress on August 31.⁶³⁸

412. The Office of the Special Rapporteur recognizes that in certain cases, restrictions on forms of expression that can incite acts of violence or public panic and situations that put the safety and integrity of people at risk can be legitimate.⁶³⁹ At the same time, the Office of the Special Rapporteur notes the important role that social networks play as a medium for sharing information. This is true at all times, but especially so in the situation of violence faced by many regions. For this reason, it is essential that norms that tend to discourage violence by providing sanctions for certain forms of expression adhere to the principle that only expressions that have the intent and potential, real and objective, to lead to violence should be prohibited in the terms of Article 13.5 of the American Convention.

G. Violence against journalists: follow-up to the recommendations in the 2010 Special Report on Freedom of Expression in Mexico.⁶⁴⁰

413. In this section, the Office of the Special Rapporteur follows up on some of the recommendations issued in its *2010 Special Report on Freedom of Expression in Mexico* with regard to the issue of violence against journalists.⁶⁴¹ The Special Report was the result of an *in loco* visit

⁶³⁶ Legislative Gazette Year I No. 54 of September 20, 2011. Pg. 4. Available at: <http://www.legisver.gob.mx/gaceta/gacetaLXII/GACETA54E.pdf>. Cf. Veracruz State Congress. September 20, 2011. *Veracruz Congress reforms Penal Code*. Available at: <http://www.legisver.gob.mx/?p=infoCarrusel&idSlider=527>; El Universal. September 20, 2011. *Veracruz Congress passes Twitter reform*. Available at: <http://www.eluniversalveracruz.com.mx/12860.html>

⁶³⁷ National Human Rights Committee (CNDH in its Spanish acronym). September 22, 2011. *Reform of Veracruz Code analyzed*. Available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2011/COM_2011_236.pdf; Uno Noticias. September 23, 2011. *CNDH analyzes reform of Veracruz Penal Code*. Available at: <http://www.unonoticias.com/DS/282599/w-CNDH-analiza-reformas-a-Codigo-Penal-de-Veracruz.html>

⁶³⁸ The proposal presented on August 31, 2011, would add the following to the Tabasco Penal Code: "Article 367: Those who through various oral, written, electronic, or any other kind of media distribute false information with the purpose of causing alarm and disturbing the public peace or constitutional order will be sentenced to six months to five years in prison and fined the equivalent of 100 to 500 workdays." ("A quien por diversos medios orales, escritos, electrónicos, o de cualquier otro tipo, difunda información falsa con el ánimo de causar alarma, perturbar la paz pública o el orden constitucional, se le impondrá prisión de seis meses a cinco años y multa de cien a quinientos días"). The President of the Permanent Commission, José Carlos Ocaña Becerra, turned the document over to the Commission on Public Safety, Civil Protection and Justice for analysis and approval. Tabasco State Congress. August 31, 2011. *Proposal to punish those who disrupt the social peace with negligently provided information*. Available at: http://www.congresotabasco.gob.mx/legislaturaLX/index.php?option=com_content&view=category&layout=blog&id=30&Itemid=123

⁶³⁹ See American Convention on Human Rights. Art. 13(5) The famous line from Judge Oliver Wendell Holmes in the case of *Schenck v. United States*, 249 U.S. 47 (1919) should also be recalled, wherein he expressed that even the strictest protection of freedom of expression does not protect those who falsely shout "fire" in a crowded theater:

The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic. [...] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

⁶⁴⁰ This section follows up the Special Report on Freedom of Expression in Mexico contained in Chapter II, section 28 of IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 525 et seq. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf. The Special Report is also available at: <http://cidh.org/relatoria/ShowDocument.asp?DocumentID=230>

⁶⁴¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 525 to 835. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

carried out jointly between August 9 and 24, 2010, with the United Nations Special Rapporteur on Freedom of Opinion and Expression at the invitation of the Mexican government. The Special Report, which was incorporated into the Annual Report of the Office of the Special Rapporteur for 2010, analyzes the following issues: violence, impunity and self-censorship; freedom, pluralism and diversity in the Democratic debate; legal action related to the exercise of freedom of expression; and access to information. Likewise, the Office of the Special Rapporteur examined certain specific cases and formulated conclusions and recommendations based on the ones that were formulated at the conclusion of the joint *in loco* visit.⁶⁴² At this time, the Office of the Special Rapporteur will do a special follow-up to some of its recommendations on the violence against journalists and communicators in Mexico.

414. At the conclusion of the 2010 *in loco* visit, the offices of the Rapporteurs issued a preliminary report in which they recommended, *inter alia*, that the Mexican State:

Strengthen the Office of the Special Prosecutor for Crimes against Journalists of the Office of the Attorney General of the Republic and the local prosecutors' offices. It is especially recommended that the necessary reforms be made to permit the exercise of federal jurisdiction over crimes against freedom of expression.

Give the Special Prosecutor's Office and the local prosecutors' offices greater autonomy and greater resources, and adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim's professional activity.

Establish a national mechanism for the protection of journalists. The mechanism must be implemented through a high-level official and inter-institutional committee; be led by a federal authority; have the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation.

*Provide training to members of the security forces on the subject of freedom of expression.*⁶⁴³

415. In the same sense, in its 2010 special report on freedom of expression in Mexico, the Office of the Special Rapporteur urged the Mexican state to "implement, as soon as possible, a comprehensive policy of prevention, protection and prosecution in response to the critical situation of violence facing journalists in the country" with "the active participation of all relevant sectors, including journalists and social organizations that defend human rights and freedom of expression."⁶⁴⁴ These recommendations highlight the need to strengthen the Office of the Special

⁶⁴² Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 534. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁴³ Office of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations, Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. August 24, 2010. *Joint Official Visit to Mexico: Preliminary Report Executive Summary*. Pages 15 and 16. Available at: <http://www.cidh.org/Comunicados/Spanish/2010/RELEMexicoEng.pdf>

⁶⁴⁴ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 706. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

Prosecutor for Crimes against Journalists (FEADLE) and to create and put into operation a mechanism for protecting journalists.

416. During 2011, the IACHR and the Office of the Special Rapporteur remained particularly concerned with regard to the situation of violence against journalists and the media in Mexico. At the conclusion of its visit to Mexico on September 30, 2011, the Office of the Rapporteur for Mexico expressed that:

[T]he Commission continues to be concerned over the high levels of violence against journalists and media workers in Mexico. In 2011, 13 members of the media have been killed for reasons that could be tied to the exercise of freedom of expression. In addition to the murders and disappearances, journalists and the media continue to face serious attacks, acts of aggression, and harassment. In parts of Mexico, journalists are subject to intense intimidation, coming primarily from criminal groups. This phenomenon creates self-censorship among many media outlets and limits investigative journalism. The Inter-American Commission once again urges the State of Mexico to strengthen the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE, for its Spanish acronym); transfer the investigation of crimes against media workers to the federal justice system, in cases in which this is warranted; and urgently implement any necessary security mechanisms to effectively safeguard the lives and well-being of journalists who have been threatened, as the IACHR recommended in its 2010 Special Report on Freedom of Expression in Mexico.⁶⁴⁵

417. Hereinafter, the Office of the Special Rapporteur will examine the progress and challenges with regard to its recommendations on violence, impunity and self-censorship, particularly with regard to the operations of the FEADLE and the creation of a mechanism for the protection of journalists. Toward doing so, it will take into account, among other elements, the *Report on Mexico: Human rights progress and challenges*, from Mexico's Secretary on Foreign Relations,⁶⁴⁶ as well as the information provided by civil society and the State during the hearing entitled "Attacks on journalists in Mexico," held on October 28, 2011, in the framework of the 143rd period of sessions of the IACHR.⁶⁴⁷

H. The Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE)

418. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur observed that:

[T]he Mexican Federation has reacted to the situation of general impunity that holds sway with regard to crimes against journalists with the creation of a Special Prosecutor's Office within the structure of the PGR.

[...]

⁶⁴⁵ IACHR. Press Release No. 105/11. *IACHR Wraps Up Visit to Mexico*. September 30, 2011. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/105-11sp.htm>

⁶⁴⁶ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁴⁷ IACHR. Hearing entitled "*Attacks on journalists in Mexico*." October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

*The FEADLE is empowered to prosecute crimes committed against those who engage in journalistic activities if and when: the victim of the crime is a practicing journalist; the crime in question was committed as a result of the exercise of the right to information or of press freedom or was motivated by either of these; the crime is of federal or common law jurisdiction, when the acts are connected to federal crimes; and when the crime concerned is punishable by a prison sentence.*⁶⁴⁸

419. During its *in loco* visit, the Office of the Special Rapporteur met with the FEADLE head to hear and discuss its working plan. The Office of the Special Rapporteur learned at that time that the FEADLE was moving forward with "several activities, among them the investigation and criminal prosecution of crimes over which it has jurisdiction, collaboration with the Attorneys General of Justice of the different federal entities in the investigation of unlawful acts against journalists, the creation of a centralized archive of initial inquiries into the homicides and disappearances of journalists, the preparation of security protocols, and the carrying out of meetings with public entities and civil society bodies."⁶⁴⁹

420. In its Special Report, the Office of the Special Rapporteur observed that as of that time, the FEADLE had not been able to "reduc[e] the generalized impunity that holds sway in cases of violence against journalists, if we consider that according to information provided in the course of the on-site visit, since its creation in 2006 the FEADLE had not achieved a single conviction, and had brought only four cases to trial."⁶⁵⁰ Likewise, the Office of the Special Rapporteur took note of FEADLE's historical tendency to decline responsibility for cases referred to it, evidencing "a lack of political will that went uncorrected until the designation in 2010 of a new Special Prosecutor who has shown the will to assume the pertinent cases." The Office of the Special Rapporteur viewed positively the fact that seven cases were brought to trial by the FEADLE between February 15 and December 31 of 2010 and expressed its hope that the working plan of the current FEADLE head would bring specific results in the short term.⁶⁵¹

421. Finally, the Office of the Special Rapporteur offered recommendations to the Mexican State. First, it made an urgent call to the Mexican State to strengthen the FEADLE, "granting it greater autonomy and its own budget, and making the necessary reforms to allow the federal jurisdiction to exercise competence over crimes against freedom of expression." Second, it recommended that the State resolve "the existing ambiguity with regard to jurisdiction over crimes against freedom of expression [...] in order to permit the exercise of federal jurisdiction over the crimes against freedom of expression when circumstances so demand," and considered it

⁶⁴⁸ Agreement A/145/10 of the Attorney General of the Republic. July 5, 2010. Arts. 2 and 5; IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 721. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁴⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 722. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf. See the information submitted to the Office of the Special Rapporteur by the Office of the Special Prosecutor on Crimes against Freedom of Expression during the *in loco* visit.

⁶⁵⁰ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 723. Available at: http://www.cidh.oas.org/annualrep/2010sp/RELATORIA_2010_ESP.pdf; Office of the Special Prosecutor on Crimes against Journalists. 2009 Report; Interview with Office of the Special Prosecutor on Crimes against Freedom of Expression. August 12, 2010.

⁶⁵¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 724. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

enormously important to push for the reforms necessary to allow federal judges to be able to hear these kinds of crimes.⁶⁵²

422. In its *Report on Mexico: Human rights progress and challenges*, the State indicated that the FEADLE “is now strengthened in that it answers directly to the Office of the Prosecutor” and that “although the Office of the [Special] Prosecutor refers responsibility on cases of organized crime to the Office of the Assistant Prosecutor of Specialized Investigation on Organized Crime (SIEDO) of the Office of the Attorney General of the Republic (PGR), there are mechanisms for institutional coordination between both areas for carrying out investigations.”⁶⁵³ Likewise, the State reported that the FEADLE established a Subprogram for the Systemization of Information “whose purpose is to use an automatic system to identify, locate and categorize information on cases of the homicide and disappearance of journalists,” for which reason a “national database on homicides and disappearances of journalists” was created including 2914 entries broken down according to state, year, area or region, and sex, among other categories. A database was also set up on attacks on journalists and the media apart from the aforementioned homicides and disappearances, with a total of 3306 entries.⁶⁵⁴ Finally, it indicated that the FEADLE had developed a Guide of Basic Steps for the Investigation of Homicides Committed against Freedom of Expression, which it had made available to prosecutors in the different federal entities.⁶⁵⁵

423. The Office of the Special Rapporteur also took note of the meeting held on August 9, 2011, that included the participation of the Special Prosecutor on Crimes against Freedom of Expression and the permanent Commission of the Congress of the Union with the purpose of discussing the subject of impunity in cases of violence against journalists. According to the information received, the Prosecutor indicated that the FEADLE was concentrating on a Work Plan that includes the statistical systematization of information in cases of homicides and disappearances of journalists through a database; the granting of precautionary measures; and the design of an early alert system to set up security protocols, among other measures.⁶⁵⁶

424. In the same meeting on August 9, 2011, the head of FEADLE reported that he had launched 126 investigations and ordered 64 precautionary measures since 2010. Likewise, he reported that his office had launched more than 40 actions against those allegedly responsible for

⁶⁵² An analysis of the efforts made toward federalization under this recommendation at: IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Paras. 725, 726 et seq. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁵³ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to access to information*. Paras. 2 and 25. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁵⁴ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to access to information*. Para. 34. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁵⁵ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to access to information*. Paras. 34, 66. Available at: http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁵⁶ El Universal. August 18, 2011. *Cynthia Cárdenas, “New telling of an old story, and without results.”* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html; El Universal. August 10, 2011. *The North, dangerous for the press*. Available at: <http://www.eluniversal.com.mx/nacion/187919.html>; Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears* (video). Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>. Cf. Office of the Attorney General of the Republic of Mexico. *Fourth Work Report 2010*. Pgs. 241-253. Available at: <http://www.pgr.gob.mx/Temas%20Relevantes/Documentos/Informes%20Institucionales/4o%20Informe%20PGR%20completo.pdf>

crimes against journalists since September of 2010 for crimes such as abuse of authority, threats, aggravated assault, aggravated theft, aggravated damage to property, and attempted murder, the majority of which had been committed by public officials.⁶⁵⁷ According to the information, the FEADLE was able to review 48% of existing case files, allowing for "the first criminologist involvement, which, although it was not conclusive, [...] has begun to explain the phenomenon."⁶⁵⁸ In addition, he stated that, "The problem has not been addressed with the speed, flexibility, and efficiency for which we all would have hoped."⁶⁵⁹

425. Despite the progress reported, the Office of the Special Rapporteur observes that more than a year since the presentation of the FEADLE's new work plan, there has still been no increase in its activities, and to date no case under examination by the agency of the homicide or murder of a journalist has resulted in the punishment of those responsible. According to the information received, the special prosecutor has attributed the persistence of impunity in cases of the homicide or disappearance of journalists to a lack of information and adequate infrastructure and has stated that "very few" cases of this kind have been resolved due to a lack of the necessary information and authority to investigate.⁶⁶⁰ Neither has information been received on the status of investigations being carried out by local and state prosecutors, or on punishments for those responsible for crimes against journalists handed down by courts at any level of government.

426. On November 11, 2011 the full Chamber of Deputies passed a modification of Article 73 of the Constitution that would empower federal authorities to hear "crimes against journalists in the exercise of the freedoms of expression, information and press," representing an

⁶⁵⁷ El Universal. August 18, 2011. *Cynthia Cárdenas, "New telling of an old story, and without results."* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html; La Silla Rota. August 9, 2011. *Officials are the ones who attack journalists the most: FEADLE.* Available at: http://lasillarota.com/index.php?option=com_k2&view=item&id=17797:funcionarios-quienes-m%C3%A1s-violentan-a-periodistas-feadle&Itemid=59; El Universal. August 10, 2011. *The North, dangerous for the press.* Available at: <http://www.eluniversal.com.mx/nacion/187919.html>; Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears (video).* Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>. Cf. *Report on Mexico: Human rights progress and challenges.* Secretary on Foreign Relations, General Directorate on Human Rights and Democracy, SRE 305.90816. September 9, 2011, Section VII. 2. *Freedom of expression and the right to access to information.* Para. 34 (reporting 65 precautionary measures, 35 criminal actions launched, and 158 investigations in progress between September of 2010 and June 30, 2011.)

⁶⁵⁸ El Universal. August 18, 2011. *Cynthia Cárdenas, "New telling of an old story, and without results."* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html; El Universal. August 18, 2011. *New telling of an old story, and without results.* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html. Also see Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears (video).* Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>

⁶⁵⁹ Animal Político. August 9, 2011. *Mexican journalists live under threat of drug traffickers: FEADLE.* Available at: <http://www.animalpolitico.com/2011/08/periodistas-mexicanos-viven-bajo-amenaza-del-narco-feadle/>; El Universal. August 18, 2011. *Cynthia Cárdenas, "New telling of an old story, and without results."* Available at: http://blogs.eluniversal.com.mx/weblogs_detalle14580.html

⁶⁶⁰ El Universal. August 10, 2011. *The North, dangerous for the press.* Available at: <http://www.eluniversal.com.mx/nacion/187919.html>; Congress Channel. August 9, 2011. *Prosecutor on crimes against journalists appears (video).* Available at: <http://www.youtube.com/canaldelcongreso#p/u/18/tlr-H7X1Epw>

important step forward in the process.⁶⁶¹ However, the passage of this change by the Senate and the legislatures in a majority of states is still pending as this report goes to press.⁶⁶²

427. The Office of the Special Rapporteur views positively the increase in the number of investigations and protective actions put in place by the Office of the Special Prosecutor on Crimes against Freedom of Expression, as well as the development of investigation protocols for crimes against freedom of expression. The gathering and systemization of forensic evidence on crimes against journalists is also important, and addresses the specific recommendations made by the Office of the Special Rapporteur in its Special Report.⁶⁶³ At the same time, it reiterates its great concern over the fact that in its almost six years of existence, the office of the special prosecutor still has not achieved the criminal conviction of a single person responsible for murdering or disappearing a journalist. In its preliminary report on the conclusion of the *in loco* visit issued in August of 2010, the Office of the Special Rapporteur expressed its hope that the FEADLE's new work plan would translate into specific results in the "short-term." More than a year later, the information submitted by the State indicates some progress, such as for example the 47 "likely guilty parties" who, as reported by the State in the hearing held before the IACHR, were turned over to the courts by the FEADLE between September 2010 and September 2011 for the commission of different crimes against freedom of expression.⁶⁶⁴ However, the lack of clear, specific and broken-down statistics on the results achieved - arrest warrants, arrests, charges, convictions and sentences - complicates the ability of the press and the Mexican public to evaluate the performance of the office of the special prosecutor and other prosecutorial offices. The reasons offered by the head of FEADLE for the lack of "rapidity, agility and efficiency" in resolving cases of violence against journalists - among them, an inadequate definition of its jurisdiction - are legitimate and were pointed out by the Office of the Special Rapporteur earlier. At the same time, the Office of the Special Rapporteur observes that the FEADLE has spent scarce resources on activities other than the ones directly associated with its central responsibility: to obtain criminal punishment for the most serious crimes - murders, disappearances and attacks - committed over the exercise of freedom of expression. The urgent situation of violence against communicators in Mexico demands an effective policy for combating impunity in these cases, and the Office of the Special Rapporteur will continue to carefully monitor the FEADLE's role in this struggle and to collaborate, where possible and within the bounds of its competence, to the attainment of these goals.

I. Creation of a mechanism for protection of journalists

428. At the close of its *in loco* visit to Mexico, the Office of the Special Rapporteur recognized the progress made in the talks between the federal government and civil society toward creating a mechanism of protection for journalists. In the report, the Office of the Special Rapporteur called attention to the:

⁶⁶¹ According to what the Chamber of Deputies passed, Article 73 would establish that, "federal authorities can also hear local jurisdiction crimes when connected with federal crimes or crimes against journalists in the exercise of freedoms of expression, information and the press." Chamber of Deputies. *Report of the United Commissions on Constitutional Matters and Justice, with draft decree that adds to the second paragraph of section XXI of article 73 of the Constitution of the United Mexican States*. Available at: <http://gaceta.diputados.gob.mx/>; El Universal. November 12, 2011. *Legislation passed to federalize crimes against journalists*. Available at: <http://www.eluniversal.com.mx/nacion/190744.html>; Sin Embargo. November 11, 2011. *Deputies approve federalization of crimes against journalists*. Available at: <http://www.sinembargo.mx/11-11-2011/72416>

⁶⁶² Constitution of the United Mexican States. Article 135.

⁶⁶³ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 821. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁶⁴ IACHR. Hearing entitled "*Attacks on journalists in Mexico*." October 27, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

*urgent need to make this process a reality and put [the] protection mechanism into operation as soon as possible. In particular, the Rapporteurs consider it essential that [the] mechanism be implemented through a high-level official and inter-institutional committee; be led by a federal authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation.*⁶⁶⁵

429. Later, the Office of the Special Rapporteur learned of the adoption of a “Coordination agreement for the implementation of preventive actions and actions to protect journalists” signed by the Secretary of Governance, the Secretary of Foreign Relations, the Secretary of Public Security, the Office of the Attorney General of the Republic and the National Human Rights Commission (CNDH).⁶⁶⁶ According to the State, this represented “the first step toward establishing a mechanism for the protection of journalists and communicators” and complied with the aforementioned recommendations of the Special Rapporteurs of the IACHR and the UN.⁶⁶⁷ The agreement created a Consultative Committee in charge of receiving requests for protection, establishing and following up on measures of prevention and protection for journalists, and facilitating the federal and local implementation of those measures. Likewise, an Evaluation Subcommittee was created with the responsibility of analyzing the requests for preventive and protective measures and making the corresponding recommendations to the Consultative Committee.⁶⁶⁸

430. The agreement established a time period of 30 days for setting up the Consultative Committee and indicated that within the next 30 days, this committee would issue the Operational and Working Guidelines that would define, among other issues, “the standards for adopting, implementing, maintaining, modifying or ending preventive or protective measures for journalists.”⁶⁶⁹

431. According to the information provided in the *Report on Mexico: Human rights progress and challenges*, the Secretary of Governance is the department in charge of coordinating the mechanism for the protection of journalists, and the Consultative Committee is comprised of that Secretary as well as the Secretary of Public Security, the Office of the Attorney General of the Republic, the National Human Rights Commission, and the United Nations Office on Drugs and Crime.⁶⁷⁰

⁶⁶⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 708. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁶⁶ SEGOG. Unit for the promotion and defense of human rights. *Coordination agreement for the implementation of preventive actions and actions to protect journalists*. November 30, 2010. Available at: http://www.derechoshumanos.gob.mx/work/models/Derechos_Humanos/Resource/134/1/images/ConvenioPeriodistas.pdf

⁶⁶⁷ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 710. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf; Citing Communication OEA-02547 from the Mexico Permanent Mission before the OAS to the Office of the Special Rapporteur, received on November 11, 2010.

⁶⁶⁸ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 711. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁶⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 711. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

⁶⁷⁰ *Report on Mexico: Human rights progress and challenges*. Secretary on Foreign Relations. General Directorate on Human Rights and Democracy. SRE 305.90816. September 9, 2011. Section VII.2. *Freedom of expression and the right to*
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432. The Office of the Special Rapporteur has received information on some progress in the implementation of the Agreement. On July 18, 2011, the organization National Center for Social Communication (CENCOS in its Spanish acronym) accepted an invitation to participate in the Consultative Committee as a permanent guest from civil society.⁶⁷¹ Likewise, on October 5 of this year, it was revealed that the state government of Morelos had joined the Agreement.⁶⁷²

433. At the same time, the Office of the Special Rapporteur took note of the comments of press and freedom of expression organizations on the mechanism's capacities and procedures and the lack of effective implementation of the protective measures contemplated in the agreement. Among other things, these comments make reference to the importance of specialized organizations and the United Nations Office of the High Commissioner for Human Rights' participation in the mechanism, as well as the need for the mechanism to have an adequate budget and technical capacity, management, and ability to act throughout the country.⁶⁷³ Likewise, in a communication issued on November 18, several nongovernmental organizations called the budget of 28.5 million pesos assigned to the mechanisms for the protection of journalists and human rights defenders in the Federation Budget Expenditures for Fiscal Year 2012 "still insufficient."⁶⁷⁴ The Office of the Special Rapporteur notes the agreement between these comments and the recommendations that the Office of the Special Rapporteur had sent to the Mexican State on the preparation of the Operational and Working Guidelines and that were later incorporated into the 2010 Special Report on Freedom of Expression in Mexico.⁶⁷⁵

434. In the hearing held before the IACHR on October 28, the State did not make reference to any journalists who had received State protection in the framework of this

...continuation
 access to information. Paras. 26, 62. Available at:
http://mision.sre.gob.mx/oi/index.php?option=com_content&view=article&id=516&Itemid=145&lang=es

⁶⁷¹ SEGOG. Unit for the promotion and defense of human rights. November 7, 2011. *Representatives of the journalists' association*. Disponible en:
http://www.derechoshumanos.gob.mx/es/Derechos_Humanos/Representantes_del_gremio_periodistico

⁶⁷² El Universal. October 6, 2011. *Morelos to join agreement to protect journalists*. Available at:
<http://www.eluniversal.com.mx/estados/82420.html>; Mexican Reporters Network of Morelos, National Center for Social Communication, Periodistas de a Pie, Casa del Periodista, ARTICLE XIX. October 5, 2011. *Pending issues in Coordination Agreement for the Implementation of Preventive Actions and Actions to Protect Journalists given support of Morelos State*. Available at: <http://www.libertad-expresion.org.mx/noticias/los-pendientes-del-convenio-de-coordinacion-para-la-implementacion-de-acciones-de-prevencion-y-proteccion-a-periodistas-ante-la-adhesion-del-estado-de-morelos/>

⁶⁷³ Article 19. *Analysis of the legal framework for a mechanism of protection in Mexico*. Available at the archive of the Office of the Special Rapporteur; Mexican Reporters Network of Morelos, National Center for Social Communication, Periodistas de a Pie, Casa del Periodista, ARTICLE XIX. October 5, 2011. *Pending issues in Coordination Agreement for the Implementation of Preventive Actions and Actions to Protect Journalists given support of Morelos State*. Available at: <http://www.libertad-expresion.org.mx/noticias/los-pendientes-del-convenio-de-coordinacion-para-la-implementacion-de-acciones-de-prevencion-y-proteccion-a-periodistas-ante-la-adhesion-del-estado-de-morelos/>. Also see the presentation of Article 19 in the hearing held before the IACHR on October 28. IACHR. Hearing entitled "Attacks on journalists in Mexico." October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

⁶⁷⁴ Centro de Derechos Humanos de la Montaña Tlachinollan, CMDPDH, Fundar, Artículo 19, Todos los Derechos Para Todos. November 18, 2011. *Secretary of Governments must make adequate use of resources for the validity of Human Rights*. Available at: <http://www.tlachinollan.org/Comunicados/segob-obligado-a-hacer-uso-adecuado-de-recursos-para-la-vigilancia-de-los-derechos-humanos.html>

⁶⁷⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Para. 712. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

Agreement.⁶⁷⁶ Likewise, the Office of the Special Rapporteur observes with concern the delay in publicly issuing the Operational and Working Guidelines of the Agreement. Although the State indicated in the public hearing held on October 28 that the Committee approved the Guidelines in its fifth session held on January 28, 2011,⁶⁷⁷ those Guidelines have still not been made public as of this report's publication deadline, for which reason the majority of communicators in the country are not aware of the preceding for requesting protection in the framework of the Agreement. The Office of the Special Rapporteur reiterates the urgent need of putting the mechanism for protection into operation given the critical situation of violence against journalists and the media in Mexico and will continue to monitor closely the implementation of the coordination Agreement for the implementation of preventive actions and protection of journalists, as well as providing all assistance to the State which its competence permits.

18. Nicaragua

A. Threats

435. The Office of the Special Rapporteur received information that Luis Galeano, a journalist from the newspaper *El Nuevo Diario*, reportedly received death threats on at least two occasions—February 19 and 21—coinciding with the February 21, 22, and 23 publication of several articles about administrative irregularities alleged to have been committed at the Supreme Electoral Council (CSE). According to the information received, on February 19 Galeano received a message on his cell phone that said: “You have 72 hours to take back what you’re going to publish. This is not a game. This is serious. If you don’t, your poor family isn’t going to see you again.” On February 21, Galeano received another message via email that said: “Luisito, man, it looks like you don’t want to live to be an old man (...) because you don’t want to take advice. Look, man, don’t go forward with that crap you’re writing for that right-wing rag *El Nuevo Diario*.”⁶⁷⁸ Galeano and the newspaper reported the incident to the police. In June, the Judicial Assistance Department of the Nicaraguan Police announced that the alleged author of the February 19 threats had been identified. However, the suspect, whose identity was not revealed, denied being the owner of the telephone from which the threat was made at the time of the incident.⁶⁷⁹ At the time of this writing, there were no reports of new developments in the investigation.⁶⁸⁰

436. According to information received, Silvia González, the *El Nuevo Diario* correspondent in the city of Jinotega, received several threats against her and her family during

⁶⁷⁶ IACHR. Hearing entitled “Attacks on journalists in Mexico.” October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

⁶⁷⁷ IACHR. Hearing entitled “Attacks on journalists in Mexico.” October 28, 2011. Audio available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=21>

⁶⁷⁸ National Police. February 22, 2011. Complaint A-0004-2011-00952. Available at the archives of the Office of the Special Rapporteur for Freedom of Expression; Nicaraguan Center for Human Rights (Centro Nicaragüense de Derechos Humanos, CENIDH). 23 de febrero de 2011. Letter to the Special Rapporteurship for Freedom of Expression. Available in the files of the Special Rapporteurship for Freedom of Expression; Committee to Protect Journalists (CPJ). February 23, 2011. *Periodista investigativo nicaragüense recibe amenazas de muerte*. Available at: <http://www.cpj.org/es/2011/02/periodista-investigativo-nicaraguense-recibe-amena.php>; Reporters Without Borders. February 22, 2011. *El Nuevo Diario, en medio de la tormenta tras revelar casos de corrupción* <http://es.rsf.org/nicaragua-el-nuevo-diario-en-medio-de-la-22-02-2011,39600.html>

⁶⁷⁹ El Nuevo Diario. June 30, 2011. *Hallan a presunto autor de amenaza a Luis Galeano*. Available at: <http://www.elnuevodiario.com.ni/nacionales/106407>

⁶⁸⁰ Nicaraguan Human Rights Center (CENIDH) and Center for Justice and International Law (CEJIL). October 24, 2011. Statement before the IACHR for the hearing on the situation of civil and political rights in Nicaragua. pp. 4 *et seq.* Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

2011. Given the serious risk, the journalist finally decided to leave the country.⁶⁸¹ In addition to her work with *El Nuevo Diario*, González was the director of a radio program that had reported alleged electoral irregularities and used to analyze the local political scene. According to the information received, on July 30 an individual approached one of González's daughters, 24-year-old Yaneri Sobalvarro González, in a public place and said, "Tell your mother to watch herself, and not go around talking too much, because we're going to make her pay, and we're going to get her where it hurts the most (...) and you, girl, take care." In addition, on August 4, 2011, González reportedly received at least three menacing text messages that were sent to her cell phone. Among other things, they said: "If you keep causing trouble we're going to have that rag where you work burned down."⁶⁸² Subsequently, the journalist reportedly received two threatening phone calls. In one of them, a voice warned her that "if she kept being a pest" she would have 48 hours to live. In another one she was reportedly told, "If you don't shut up, we're going to shut one of your children up." Later, the journalist reportedly received new death threats via text message. Unknown persons also reportedly threw a chicken's head into the yard of her house; it was wrapped in paper, on which her name was written. Finally, two days before she was forced to leave the country, she reportedly received two anonymous notes written with clippings from newspapers and magazines that read, "We're going to kill you."⁶⁸³ According to reports, the journalist and her daughter filed a complaint regarding the incidents with the National Police in Jinotega. They reportedly named a suspect as the alleged author of the intimidating messages from the July 30 incident. Subsequently, the police reportedly summoned Yaneri to the police premises in Jinotega. There at the police station, the journalist's daughter reportedly encountered the suspect, who allegedly took her by the arm and led her to an office where she was questioned by two police officers, who also allowed the suspect to participate in the interrogation.⁶⁸⁴ The Office of the Special Rapporteur requested information from the State regarding these incidents in September 1, 2011.⁶⁸⁵

437. In response to the request for information on these events, on September 22, 2011, the State reiterated its commitment to freedom of expression and underscored the constitutional protection of "the practice of constructive and free critical journalism by the media and by journalism professionals in particular." The State stated that "In Nicaragua there is no policy of persecution or censorship against the work of the media, or against journalists or media workers individually or collectively; nor is this a country that attacks or harms the freedom to inform, or the physical, emotional, or psychological welfare or the lives of journalists, whatever their ideology or

⁶⁸¹ El Nuevo Diario. September 20, 2011. *Periodista END exiliada*. Available at: <http://www.elnuevodiario.com.ni/nacionales/114366-periodista-end-exiliada>

⁶⁸² AFP News Agency (Agence France-Presse). August 5, 2011. *Diario de Nicaragua denuncia amenazas contra una periodista*. Available at: <http://noticias.terra.com.pe/internacional/latinoamerica/diario-de-nicaragua-denuncia-amenazas-contra-una-periodista,56b9c86540b91310VgnVCM10000098f154d0RCRD.html>; La Prensa. August 6, 2011. *Periodista de Jinotega amenazada*. Available at: <http://www.laprensa.com.ni/2011/08/06/nacionales/69016>

⁶⁸³ El Nuevo Diario. December 20, 2011. *Periodista END exiliada*. Available at: <http://www.elnuevodiario.com.ni/nacionales/114366-periodista-end-exiliada>; Confidencial. September 21, 2011. *Cabeza sangrante de gallina*. Available at: <http://www.confidencial.com.ni/articulo/4929/cabeza-sangrante-de-gallina>; Nicaraguan Human Rights Center (CENIDH) and Center for Justice and International Law (CEJIL). October 24, 2011. Statement before the IACHR for the hearing on the situation of civil and political rights in Nicaragua. pp. 4 *et seq.* Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸⁴ Communication from the Nicaraguan Human Rights Center (CENIDH) to the Office of the Special Rapporteur for Freedom of Expression. August 15, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸⁵ On September 1, Office of the Special Rapporteur for Freedom of Expression requested information from the State about the investigations into the threats received by Silvia González and the results thereof; the suspect's alleged ties to any political organization; the judicial proceedings brought against the suspect, and the circumstances of the summoning of González's daughter to give a statement at the police station; and finally, it asked whether there had been any public statement condemning the threats and intimidation reported by Nicaraguan journalists.

Government (...).” With respect to the fruitless investigations, the State reported that it had opened the police investigation and classified it as a case involving threats; requested that a telephone company provide the numbers for incoming calls to two telephones used by the complainant; interviewed Silvia González’s daughter, and requested written information from the complainant pertaining to the threatening calls and texts received on her telephone. The State explained with regard to the judicial proceedings against the suspect that the charge had to be amended from “threats” against Silvia González to “harassment” of Yanery Sobalvarro González, the journalist’s daughter. A preliminary hearing for the offense of harassment was scheduled for September 20, 2011. With regard to the suspect’s presence when Yanery Sobalvarro was summoned to the police station, the State explained that the National Police had summoned the suspect to provide a statement, and had summoned the complainant in order for her to be present at that proceeding. As for whether the State had made any public condemnation of the reported threats and intimidation, the State responded that the complaints involve isolated cases and have been handled diligently by the proper authorities.⁶⁸⁶

438. Representatives of the complainant informed this Office of the Special Rapporteur that Silvia González’s complaint had not been investigated and that no security had been provided to her. In the representatives’ opinion, the Police had not informed the complainant of the source of the threatening telephone calls that she had received. The police amended the charge and named the daughter as the victim, rather than the mother. They stated that on August 23, the Police reportedly filed a charge before the judicial authorities alleging harassment of the reporter’s daughter, dismissing the threats against the journalist. On September 2, the Local Judge of Jinotega admitted the case and scheduled an initial hearing for September 20. However, that day the journalist reported left the country for her safety.⁶⁸⁷

439. Principle 9 of the Declaration of Principles on Freedom of Expression establishes that “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

B. Attacks on journalists and media

440. According to the information received, a group of people was reportedly assaulted by Police on April 2, when they tried to take part in an authorized demonstration against the reelection of President Daniel Ortega. According to reports, the Police first refused to allow members of the Nicaraguan Human Rights Center (CENIDH) and other demonstrators pass, and then struck them with police batons. The CENIDH is the beneficiary of precautionary measures that were issued by the IACHR in 2008 and remain in effect at this time. The IACHR requested information

⁶⁸⁶ The documentation submitted by the State in its response to the Office of the Special Rapporteur provides the statement given by Yanery Sobalvarro González, the daughter of journalist Silvia González, on August 2, 2011 at the National Police premises. At that time, Sobalvarro stated that the suspect had told her he had heard that “Silvia was talking about politics on the radio and that she should be very careful, that she should not be out on the streets, and if she did go out, she should not go on foot because it was very dangerous.” Sobalvarro added that the suspect “at no time threatened her, let alone told her that she was in their sights.” As for the appearance of the suspect and Silvia González at the National Police offices on August 4, 2011, the record of the proceeding indicates that the suspect stated that he had told Sobalvarro “to be careful, since her mother was a public figure (...) especially now that it’s election season.” In addition, he said that, “at no time had he made threats (since) the only thing he did was give her a piece of advice without any bad intent.” Office of the Attorney General of the Republic. September 22, 2011. Official Letter PGR 1915. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸⁷ Nicaraguan Human Rights Center (CENIDH) and Center for Justice and International Law (CEJIL). October 24, 2011. Statement before the IACHR for the hearing on the situation of civil and political rights in Nicaragua. pp. 4 *et seq.* Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

from the State of Nicaragua about the actions it has undertaken to guarantee the lives and safety of the beneficiaries.⁶⁸⁸ The State informed the IACHR that on April 2 two previously scheduled marches ran into each other, even though measures had been taken to prevent that from happening. The State asserted that the precautionary measures have been enforced at all times, and it affirmed that the security mechanisms are still in force at the CENIDH's offices and at its president's residence.⁶⁸⁹

441. The Office of the Special Rapporteur was informed that on January 19 the owner of the *Telecable* company, in the town of Condega, cut the broadcast signal of *Canal 15*, alleging adverse effects on its business interests. The cancellation of *Canal 15's* broadcast occurred following repeated threats and acts of sabotage against this station that coincided with or followed the airing of news and opinion programs that called local authorities into question. In addition, on January 16, 2011, *Telecable's* fiber optic cables were reportedly cut. An organization calling itself "*Columna Simón Bolívar*" reportedly left a written note that read: "We are warning you, we do not want *Canal 15* in Pueblo Nuevo." Prior to the January 16 sabotage, several fiber optic utility poles had reportedly been stolen, and *Telecable* employees reportedly received text messages containing threats that alluded to the possibility of bombs being placed at the station. They were signed by the so-called "*Columna Simón Bolívar.*" The victims of those incidents reported them to the Police, but the results of the investigation are unknown.⁶⁹⁰

442. The Office of the Special Rapporteur learned that on several occasions a group of trade unionists and former distributors of the newspaper *La Prensa*, whose contract had been canceled, blocked the paper from coming out in the early morning hours, causing a several-hour delay in its circulation; they also reportedly fired home-made explosives in the vicinity of the paper. The conflict stemmed from *La Prensa's* August 2010 decision to rescind the contracts of a group of newspaper distributors. The Ministry of Labor (MITRAB) ordered the newspaper to rehire 23 contractors who had been dismissed.⁶⁹¹ According to the information received, the blockages at the newspaper's entrance reportedly took place in the early morning hours of December 7 and 23, 2010, August 14, 2011, and September 4, 2011. The residence of the general manager of *La Prensa* was also blockaded on December 10, 2010, and February 5, 2011. On all of these occasions, the demonstrators prevented the newspaper from coming out on time, and fired home-made explosives into the air, without the authorities ever reporting to the scene.⁶⁹²

⁶⁸⁸ Nicaraguan Human Rights Center (CENIDH). Communication to the IACHR in reference to precautionary measures 277-08. April 4, 2011. Available at: Archives of the IACHR.

⁶⁸⁹ Communication from the State of Nicaragua to the IACHR in reference to precautionary measures 277-08. May 31, 2011. Available at: Archives of the IACHR.

⁶⁹⁰ El Nuevo Diario. January 25, 2011. *Orteguismo saca del aire a Canal 15 Condega TV*. Available at: <http://www.elnuevodiario.com.ni/nacionales/93202>; Inter-American Press Association (IAPA). *La SIP pide restablecer señal a un canal censurado en Nicaragua*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4513&idioma=sp; Reporters Without Borders. February 3, 2011. *Un canal considerado crítico con el gobierno suspende sus programas tras recibir repetidas amenazas*. Available at: http://es.rsf.org/nicaragua-un-canal-considerado-como-critica-03-02-2011_39466.html

⁶⁹¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 142. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁶⁹² *La Prensa*. December 10, 2010. *Agresión a La Prensa y pasividad policial*. Available at: <http://www.laprensa.com.ni/2010/12/11/politica/46093>; El Universal. February 6, 2011. *Periódico Nicaragüense denuncia "acoso"*. Available at: http://www.eluniversal.com/2011/02/06/int_ava_periodico-de-nicarag_06A5120777.shtml; *La Prensa*. August 14, 2011. *Policía ignora ataque contra La Prensa*. Available at: <http://www.laprensa.com.ni/2011/08/14/nacionales/69832>; *La Prensa*. September 5, 2011. *Acoso a libertad de expresión*. Available at: <http://www.laprensa.com.ni/2011/09/05/poderes/72240>

443. The Office of the Special Rapporteur considers it important that in situations such as these the authorities adopt a regulatory framework that simultaneously allows for the satisfaction of the right to freedom of expression—severely affected by the aforementioned blockades—and the right to social protest in accordance with the international standards.

C. Subsequent liability

444. According to information received, two opposition city councilmen from the Managua Mayor's Office, Luciano García and Leonel Teller, were reportedly charged with criminal defamation, and one of them was reportedly convicted, after exposing alleged irregularities in that municipal government. According to the information received, on March 30, Councilman Luciano García spoke out in an article published by the newspaper *La Prensa* about several alleged irregularities committed by municipal authorities, and called for the mayor to be dismissed from office. The councilman cited an audit performed at the Managua Mayor's Office that reportedly revealed embezzlement equivalent to some US \$155,000. On April 13, 2011, the aforementioned authority filed a complaint alleging criminal defamation before the Third Criminal Court of Managua. On June 27, 2011, the court found García guilty and imposed a fine equivalent to about US \$19,000. The judgment was affirmed on appeal by the Tenth Criminal District Court on September 2, although the amount of the fine was reduced to the equivalent of US \$9,500.⁶⁹³

445. The tenth principle of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

446. In addition, principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information."

D. Administrative restrictions

447. According to the information received, the General Revenue Service and the Customs Bureau reportedly delayed the release of a shipment of goods to the newspaper *El Nuevo Diario*. The shipment contained paper and printing plates—essential input materials for the publication of the morning paper—and had entered the country on January 6. According to the information provided to this office, *El Nuevo Diario* retrieved materials from customs on several occasions without any trouble during 2010. On this occasion, the delays apparently coincided with

⁶⁹³ Petition of Luciano Rafael García Mejía before the Inter-American Commission on Human Rights for the violation of due process, freedom of expression, right to equal protection, the right to leave the country freely, and the right to judicial protection, received by the IACHR on October 24, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. *La Prensa*. March 30, 2011. *Piden la cabeza de Fidel Moreno*. Available at: <http://www.laprensa.com.ni/2011/03/30/nacionales/56322>; EFE News Service. August 9, 2011. *Consejeros opositores denuncian desalojo de sus oficinas en alcaldía de Managua*. Available at: <http://noticias.terra.com.ar/internacionales/concejales-opositores-denuncian-desalojo-de-sus-oficinas-en-alcaldia-managua,2caa91fd420b1310VgnVCM10000098f154dORCRD.html>

the publication of several articles in which *El Nuevo Diario* reported alleged acts of corruption and nepotism in the Treasury Department and the General Revenue Service.⁶⁹⁴ The paper and the input materials were finally able to be retrieved from the warehouse on February 11.⁶⁹⁵

E. Restriction on access to information and mandatory government broadcasts

448. The Office of the Special Rapporteur learned that on January 7, the Supreme Electoral Council (CSE) reportedly announced through its spokesperson a policy of transparency and open doors toward the media, but stated that it “[would] reserve the right” to deny entry into conferences to media with an agenda aimed at “attacking individuals and public servants.”⁶⁹⁶ The admonition was issued following a year in which there were repeated reports of discrimination against independent media in accessing official press conferences, especially at the CSE.⁶⁹⁷

449. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

450. The Office of the Special Rapporteur has received information indicating that multiple presidential broadcasts have continued to be employed on all cable televisión channels to transmit messages that even include partisan elements. Such actions are carried out based on administrative order 009-2010 of the Nicaraguan Institute for Telecommunications and Postal Service (TELCOR), according to which subscriber-based television channels must make their services and facilities available to the Government of the Republic during times of national emergency.⁶⁹⁸ According to reports, last January 10 several cable television channels that did not link their signals up to the presidential speech were reportedly blocked when President Ortega issued his Government Report in a public square. In addition, on July 19, open channels and cable channels were forced to air the official celebration of the 32nd anniversary of the triumph of the Sandinista revolution.⁶⁹⁹

⁶⁹⁴ Nicaraguan Human Rights Center (CENIDH). Communication to the Office of the Special Rapporteur for Freedom of Expression, received on February 9, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; Reporters Without Borders. February 22, 2011. *Nicaragua: Cerco a El Nuevo Diario por revelar casos de corrupción*. Available at: <http://www.rsf-es.org/news/nicaragua-cerco-a-el-nuevo-diario-por-revelar-casos-de-corrupcion/>

⁶⁹⁵ Inter-American Press Association (IAPA). April 2011. *Information by Country: Nicaragua*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=46&inforid=818&idioma=sp

⁶⁹⁶ Nicaraguan Human Rights Center (CENIDH). Communication to the Office of the Special Rapporteur for Freedom of Expression, received on February 9, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; La Prensa. February 6, 2011. *El bozal del CSE*. Available at: <http://www.laprensa.com.ni/2011/02/06/nacionales/51273>

⁶⁹⁷ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 339. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁶⁹⁸ Nicaraguan Institute for Telecommunications and Postal Service (TELCOR). Administrative Order 009-2010 of June 22, 2010. Available at: http://www.telcor.gob.ni/DocAdmin.asp?Accion=VerDocumento&DAD_ID=5300

⁶⁹⁹ La Prensa. July 21, 2011. *COSEP critica a cadenas de radio y TV*. Available at: <http://www.laprensa.com.ni/2011/07/21/politica/67351>; El Nuevo Diario. January 11, 2011. *Un remedo de mensaje presidencial*. Available at: <http://archivo.elnuevodiario.com.ni/2011/01/11/nacionales/139321>; Europa Press. January 11, 2010. *La oposición tilda a Ortega de "dictador" por impedir la observación internacional en las elecciones*. Available at: <http://www.europapress.es/latam/politica/noticia-nicaragua-oposicion-tilda-ortega-dictador-impedir-observacion-internacional-elecciones-20110111193440.html>; Confidencial. February 6, 2011. *Cadenas televisivas presidenciales*. Available at: <http://www.confidencial.com.ni/articulo/3108/cadenas-televisivas-presidenciales>

451. Principle 12 of the IACHR's Declaration of Principles on Freedom of Expression maintains that, "Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

452. Principle 5 of the IACHR's Declaration of Principles establishes that, "Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

19. Panama

453. According to information received, on July 25 the 12th Criminal Circuit Court of Panama dismissed without prejudice a case alleging criminal defamation against Grisel Bethancourt, a journalist from the newspaper *Crítica* and the president of the National Association of Journalists of Panama. The case reportedly began with a claim filed by a person suspected of committing a crime, who was in the end acquitted. The information published in 2009 was based on an order to stand trial issued by the Second Court of Justice. The criminal court reportedly concluded that there was no malicious intent in the article published by the journalist.⁷⁰⁰ The Prosecutor's Office reportedly appealed the decision.⁷⁰¹ Journalists Jahaira Valverde and Enrique Brathwaite of the newspaper *Mi Diario* have also been prosecuted in this matter, and at the time of this writing their case is still pending.⁷⁰² On August 22, Brathwaite was reportedly detained at a routine police checkpoint when his name appeared in a police database showing that he had a pending court case, in spite of the fact that he had appeared before the respective court in a timely manner. The journalist was handcuffed and taken to a police station, then released several hours later.⁷⁰³

454. The Office of the Special Rapporteur learned of the concern of press organizations over the fact that there are more than 40 cases pending before various courts in which journalists are accused of crimes against honor.⁷⁰⁴ The Office of the Special Rapporteur finds it important to

⁷⁰⁰ TVN Noticias. July 26, 2011. *Sobrescen a presidenta del Colegio de Periodistas*. Available at: http://64.117.203.107/aldescubierto/noticias_detalle.asp?id=56100; *Crítica*. July 26. *Dictan sobreseimiento a favor de periodista*. Available at: http://www.critica.com.pa/hoy/sucesos-interna.php?edition_id=20110726&external_link=dictan_sobreseimiento_a_favor_de_periodista

⁷⁰¹ National Association of Journalists. July 28, 2011. *Ordenan conducción de periodistas y apelan decisión de fiscal por delitos de calumnia e injuria*. Available at: <http://conapepanama.blogspot.com/2011/07/ordenan-conduccion-de-periodistas-y.html>

⁷⁰² National Association of Journalists. July 28, 2011. *Ordenan conducción de periodistas y apelan decisión de fiscal por delitos de calumnia e injuria*. Available at: <http://conapepanama.blogspot.com/2011/07/ordenan-conduccion-de-periodistas-y.html>; *Crítica*. Undated. *Fijan fecha de audiencia para periodistas*. Available at: http://www.critica.com.pa/hoy/sucesos-interna.php?edition_id=20111025&external_link=fijan_fecha_de_audiencia_contra_periodistas

⁷⁰³ TVN Noticias. August 22, 2011. *Detenido el periodista Enrique Brathwaite*. Available at: http://64.117.203.107/noticias/noticias_detalle.asp?id=57889; National Association of Journalists of Panama. August 23, 2011. *Carta de protesta dirigida al presidente de la Corte por detención de periodista Brathwaite*. Available at: <http://conapepanama.blogspot.com/search?q=enrique>

⁷⁰⁴ Office of the National Ombudsman. February 24, 2011. *Informe Especial de Libertad de Expresión en Panamá*. Pg. 44. Available at: http://www.defensoria.gob.pa/index.php?option=com_flippingbook&view=book&id=52%3Ainforme-de-libertad-de-expresion-en-panama&catid=6%3Ainformes&Itemid=61; La Estrella. February 27, 2011. *Persisten amenazas a la libertad de expresión*. Available at: http://www.laestrella.com.pa/online/impreso/2011/02/27/persisten_amenazas_a_la_libertad_de_expresion.asp; Telephone interview with Grisel Bethancourt, President of the National Association of Journalists. November 16, 2011.

stress that, in a 2007 decision that we value for its importance to the defense of freedom of expression, Panama decriminalized libel and slander offenses when they concern critical information or opinions about official acts or omissions of high-ranking public servants. This decision should favor those who had previously been the beneficiaries of a pardon.⁷⁰⁵ The Office of the Special Rapporteur has indicated that criminal penalties applied to crimes against honor have an intimidating and chilling effect on the exercise of freedom of expression, and that they are disproportionate and truly unnecessary in a democratic society. The use of criminal mechanisms to penalize expressions regarding issues of public interest or about government employees can be a means of indirect censorship, due to its limiting and chilling effect on speech concerning issues of public relevance.⁷⁰⁶

455. The Office of the Special Rapporteur received information concerning threats reportedly received by *La Prensa* journalist Santiago Cumbreira from Alma Cortés, the Minister of Labor and Employment Development, and personnel from her office. According to reports, on June 23, Cortés stated on a television program, “Cumbreira: be careful with me, my reputation has no price.” This was apparently in response to a series of reports by the journalist regarding alleged irregularities in a social program of the Ministry of Labor. According to the information available, a staff member from the minister’s office later warned the journalist: “you are furiously attacking the minister (Cortés), but not the people from the (opposing party) PRD... I am not the minister who allows herself to be intimidated... I don’t threaten, I act.” After the threats were disclosed, President Ricardo Martinelli reportedly ordered the Minister of Labor to refrain from making statements against the media, and to publicly apologize to the journalist. In addition, he reportedly warned her that she or the personnel under her charge would be dismissed in the event that these actions were repeated.⁷⁰⁷

456. According to information received by the Office of the Special Rapporteur, on February 26 the National Police detained Spanish journalists and human rights defenders Francisco Gómez Nadal and María del Pilar Chato Carral while they were filming and documenting an indigenous people’s demonstration in Panama City and ordered their “voluntary return” to their country of origin. According to the journalists’ statement, both of them were held in custody for at least 48 hours prior to being taken to the airport, during which time they were not allowed to meet with their attorney, receive consular assistance, or properly exercise their right to a defense.⁷⁰⁸ The

⁷⁰⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 352.

<http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁷⁰⁶ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 353.

<http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁷⁰⁷ Hacer Latin American News. June 24, 2011. *Panamá: Ministra de Trabajo amenaza a La Prensa*. Available at: <http://www.hacer.org/latam/?p=8798>; *La Prensa*. June 23, 2011. “Yo no amenazo, yo ejecuto”, *García*. Available at: <http://mensual.prensa.com/mensual/contenido/2011/06/23/hoy/panorama/2641386.asp>; *Panamá América*. June 24, 2011. *Martinelli regaña a ministra Cortés por amenazas*. Available at: http://www.panamaamerica.com.pa/periodico/buscador/resultado.php?story_id=1064348&texto=%2522que

⁷⁰⁸ Committee to Protect Journalists (CPJ). March 2, 2011. *Periodistas españoles críticos expulsados de Panamá*. Available at: <http://cpj.org/es/2011/03/periodistas-espanoles-criticos-expulsados-de-panam.php>; Human Rights Foundation. April 5, 2011. *Arbitrary Detention and Expulsion of Foreign Journalists and Human Rights Defenders from Panama*. Available at: <http://thehrf.org/media/documents/HRFLegalReportPanama.pdf>; *La Prensa*. March 1, 2011. *Periodistas repatriados*. Available at: <http://mensual.prensa.com/mensual/contenido/2011/03/01/hoy/panorama/2519696.asp>

journalists stated to various media outlets that they had been pressured by authorities to agree to the “voluntary return.”⁷⁰⁹

457. In response to a request for information by this Rapporteurship, a statement dated April 28 from the Permanent Mission of Panama to the OAS states that Francisco Gómez Nadal and María del Pilar Chato Carral were apprehended for disturbing the peace, together with other demonstrators who were blocking a public street. Due to their status as aliens, they were sent to an immigration shelter, where it was determined that Gómez did not have employment authorization and Chato had a tourist visa. According to the information provided by the State, on February 27 an order was issued for the journalists’ arrest and it was determined that both of them had violated the immigration laws by taking part in alleged acts against public safety. Based on those acts, the State ordered the “voluntary return” of the Spanish citizens to their country of origin, and barred them from re-entering Panama for two years. According to the State, Gómez and Chato were reportedly assisted “at all times” “by their attorney” and by personnel from the Office of the Ombudsman of Panama. On February 28, they were both escorted to the international airport to board a flight to Spain.⁷¹⁰

458. The journalist Gómez Nadal assured that he had been exercising his rights in a legal manner and that he was expelled in retaliation for this.⁷¹¹ As this report went to press, the Office of the Special Rapporteur had not been informed of new developments in this case.

459. The Office of the Special Rapporteur takes note of the withdrawal from the parliamentary agenda of a bill that would have amended the Criminal Code to include the imposition of a four-year prison sentence upon “any person who, without valid grounds, publicly offends, affronts, or insults the president of the Republic or any elected public servant.” The legislative initiative was introduced by representatives of the party in power on January 5, and withdrawn on January 11 following harsh criticism from legislators and the Office of the National Ombudsman.⁷¹² The initiative not only violated Article 13 of the American Convention on Human Rights and Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression but also contradicted the amendment passed in 2007, set forth in Article 196 of the Criminal Code, which partially decriminalizes defamation offenses when they pertain to critical information or opinions about official acts or omissions of high-ranking public servants.⁷¹³

⁷⁰⁹ Reporters Without Borders. February 28, 2011. “*La expulsión de Paco Gómez Nadal y Pilar Chato marca una negación de la libertad de expresión*”. Available at: <http://es.rsf.org/panama-dos-periodistas-espanoles-28-02-2011,39642.html>

⁷¹⁰ Statement of the Permanent Mission of Panama to the OAS. April 18, 2011. PANA-OEA-3-361-2011.

⁷¹¹ Radio Netherlands. March 2, 2011. *Panamá: ¿Periodista y defensor de derechos humanos o agitador?* Available at: <http://www.rnw.nl/espanol/article/panama-%C2%BFperiodista-y-defensor-de-derechos-humanos-o-agitador>; Radio Televisión Española. March 1, 2011. *Panamá fuerza la salida de país de un periodista español crítico*. Available at: <http://www.rtve.es/noticias/20110301/panama-fuerza-repatriacion-periodista-espanol-critico-con-martinelli/412336.shtml>

⁷¹² Reporters Without Borders. January 12, 2011. *Alivio tras el retiro del anteproyecto de ley que sancionaba la ofensa al jefe de Estado*. Available at: <http://es.rsf.org/panama-retrograda-y-peligrosa-reforma-del-10-01-2011,39263.html>; Telemetro. January 11, 2011. *Asamblea retira proyecto que pretendía imponer nueva “mordaza”*. Available at: <http://www.telemetro.com/noticias/2011/01/11/nota64941.html>; Ibero-American Federation of Ombudsmen. January 20, 2011. *Panamá: Defensor del Pueblo rechaza proyecto que penaliza a quien ofenda al presidente*. Available at: <http://www.portalfio.org/inicio/noticias/item/5868-panam%C3%A1-defensor-del-pueblo-rechaza-proyecto-que-penaliza-a-quien-ofenda-al-presidente.html>

⁷¹³ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 352. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

460. The Office of the Special Rapporteur learned of anonymous videos posted on the Internet site YouTube, which contained disparaging messages for the express purpose of damaging the credibility of well-known independent Panamanian journalists. According to the information received, the videos call into question the professional careers of journalists Lina Abad, editor of the investigative unit of the newspaper *La Prensa*, and Álvaro Alvarado, host of the *Telemetro* news program on *Canal 13*. The videos also question the journalists' integrity and claim that they have ties to opposition political parties. In other cases, the messages have been aired on television channels and attributed to the pro-government Democratic Change Party [*Partido Cambio Democrático*], as in the case of a message that attempted to discredit reporter Santiago Cumbreira of the investigative unit of *La Prensa*. The series of messages reportedly began to appear after the publication of the content of diplomatic cables from the State Department about the Panamanian government.⁷¹⁴

461. During the public hearing on Access to Public Information in Panama held on October 28, 2011, the Office of the Special Rapporteur received information about the implementation of the Access to Information Act in effect since 2002. The petitioners claimed that the law has regressed in terms of its effectiveness, given the issuance of recent administrative decisions inconsistent with the provisions of the Act. Such decisions include the specification that only the interested parties in a matter may request public information; the charging of taxes to photocopy or certify documents; the reduction of information made available to the public by state agencies voluntarily and proactively; the failure to comply with deadlines established for the release of information; the categorization of information as classified or restricted-access beyond what is provided for under the Act, through lower-ranking provisions such as regulations and decrees; and the lack of an effective judicial remedy to prevent the denial of this right. According to reports, in the specific experience of a Panamanian environmental organization, it was able to confirm that of more than 30 writs of *habeas data* filed in over three years, only one has been adjudicated. For its part, the State acknowledges that there are shortcomings in the implementation of the Act, but it maintains that it has progressively fostered mechanisms to develop the legal standards, as well as processes for receiving requests and appeals, and for imposing penalties for noncompliance with the Act. According to the information received from the State, from the time of its enactment, nearly 15 orders or resolutions have been passed regulating or strengthening the enforcement of the act and supporting its progressive development. The State reported that it is taking the necessary steps to bring about technological transformations to improve access to public information and to reduce or eliminate the costs of obtaining it. The State also agreed to receive proposals from civil society enabling it to improve the enforcement and effectiveness of the Access to Public Information Act. The Office of the Special Rapporteur acknowledges the existence of an important legal framework in Panama. However, it expresses its concern over the possibility that in practice the fundamental standards are not being applied. These standards include: the ability of any person to access information in the possession of the State; the ability to obtain the information free of charge or at a low cost; the principle that a request may be denied only under exceptional circumstances; the existence of a restrictive legal stipulation that narrowly defines the limitations on access to information; compliance with brief and reasonable time periods for the release of information; and the existence of simple and effective administrative and judicial remedies to challenge decisions. The Office of the Special Rapporteur notes with satisfaction the State's willingness to improve the

⁷¹⁴ Inter-American Press Association (IAPA). May 10, 2011. *La SIP pide a gobierno de Panamá investigar campañas de desprestigio contra periodistas*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4558&idioma=sp; Reporters Without Borders. May 9, 2011. *Tormenta gubernamental tras revelaciones de WikiLeaks; campaña de desacreditación contra periodistas*. Available at: <http://es.rsf.org/panama-tormenta-gubernamental-tras-09-05-2011,40249.html>

implementation of the Act and its openness toward working jointly with civil society to adequately implement the right to access to information in Panama.⁷¹⁵

20. Paraguay

462. On June 30, Judge Manuel Aguirre Rodas acquitted *ABC Color* newspaper reporter Sandra López of criminal defamation charges. According to reports, a complaint was filed against the journalist by a businesswoman and former model referred to in an article published on June 28, 2009, about an alleged case of influence peddling. The plaintiff sought a two and a half year prison sentence and damages of 6 billion guaraníes (around US\$1.5 million). The judge found that the news article contained the journalist's opinion based on documents and truthful sources, which did not merit punishment.⁷¹⁶

463. In December of 2010, two former employees of the Department of National Emergency separately filed two criminal complaints against journalist Jorge Torres of the newspaper *ABC Color*, alleging criminal defamation offenses. Torres had reported on irregularities in the management of funds at that public agency. According to the information received, the public employees felt offended by the publications and requested the imposition of a sentence of up to two years in prison or a fine. The Office of the Public Prosecutor reportedly opened a case against the plaintiffs for alleged acts of breach of confidence and the production of fraudulent documents.⁷¹⁷ On February 4, a deputy commissioner filed a criminal defamation complaint against *ABC Color* news correspondent Omar Acosta, claiming harm based on reports that linked her to allegations of torture while she was the chief of police station No. 16 of Guayaybí, in the department of San Pedro.⁷¹⁸

464. Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression states that "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the

⁷¹⁵ Thematic hearing before the IACHR on access to public information in Panama, requested by environmental organizations. Washington D.C. October 28, 2011. Available at: (List of multimedia resources on hearings) <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

⁷¹⁶ Instituto Prensa y Sociedad (IPYS). July 1, 2011. *Paraguay: Absuelven a periodista acusada de difamación por empresaria*. Available at: <http://www.ipys.org/index.php?q=noticia/695>; ABC. July 1, 2011. *Magistrado absuelve a periodista y ratifica libertad de prensa y opinión*. Available at: <http://www.abc.com.py/nota/magistrado-absuelve-a-periodista-y-ratifica-libertad-de-prensa-y-opinion/>; ABC. June 29, 2011. *Abogados de Zuni pidieron pena de dos años y medio contra periodista*; Available at: <http://www.abc.com.py/nota/abogados-de-zuni-solicitaron-pena-de-dos-anos-y-medio-contra-periodista/>; Paraguay.com. June 30, 2011. *Sandra López: "Con el fallo ganó la libertad de expresión"*. Available at: <http://www.paraguay.com/nacionales/sandra-lopez-con-el-fallo-gano-la-libertad-de-expresion-72501>

⁷¹⁷ ABC. December 21, 2010. *Funcionario de la SEN imputado con Camilo querrela a periodista*. Available at: <http://www.abc.com.py/nota/funcionario-de-la-sen-imputado-con-camilo-querrela-a-periodista/>; Foro de Periodistas Paraguayos. June 17, 2011. *Preocupación del FOPEP ante el aumento de demandas*. Available at: <https://www.facebook.com/topic.php?uid=194659127214966&topic=360#!/topic.php?uid=194659127214966&topic=360#!/Foep>; ABC. March 7, 2011. *Camilo y periodista van a tribunales para una audiencia de conciliación*. Available at: <http://www.abc.com.py/nota/camilo-y-periodista-van-a-tribunales-para-una-audiencia-de-conciliacion/>; Paraguay.com. April 15, 2010. *Juez procesa por presunta malversación a Camilo Soares*. Available at: <http://www.paraguay.com/nacionales/juez-procesa-por-presunta-malversacion-a-camilo-soares-20053>

⁷¹⁸ El Diario. February 8, 2011. *Policía acusada de torturas querrela a corresponsal de ABC*. Available at: <http://eldiario.com.py/?p=173>; Foro de Periodistas Paraguayos. June 17, 2011. *Preocupación del FOPEP ante el aumento de demandas*. Available at: <http://www.fopep.org.py/noticias-detalle.php?id=20>

specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

465. In the early morning hours of January 12, a homemade explosive device detonated near the building of the privately-owned television station *Canal 9* in Asunción, and another in a nearby park. No one was injured. Hours later, a pamphlet appeared—the authenticity of which was unconfirmed—attributing the attack to an alleged subversive group. The explosion took place in the midst of a labor dispute at the station.⁷¹⁹

466. The Office of the Special Rapporteur was informed of a threat reportedly received on May 27 by three journalists from the Governor of Alto Paraná. According to reports, the governor publicly stated, “I want a machine gun to spray these miserable bums with bullets,” following a series of print and radio reports about a judicial investigation involving the alleged distribution of bad food to school cafeterias. The journalists referred to were reportedly Carlos Bottino and Samir Sánchez of *Radio Parque*, and Fermín Jara of the regional newspaper *Vanguardia*, who is also a correspondent for *ABC Color*. Later, the governor reportedly explained to the press that his statement was the result of an angry moment and that he had at no time intended to harm the journalists. Nevertheless, Bottino reported the threat to the Public Ministry. After the governor’s warning, *Radio El Parque* reportedly suspended its broadcasting of Bottino and Sánchez’s radio programs.⁷²⁰

467. The Office of the Special Rapporteur received information about the final enactment of the Telecommunications Act, which had been vetoed by President Fernando Lugo. At the time, consistent with the challenge raised, the Rapporteur’s Office maintained that the law contained restrictions on the operation of community radio broadcasters and criminal penalties that could be discriminatory and problematic under the freedom of expression standards of the inter-American human rights system. According to the information received, the Paraguayan Senate passed the Telecommunications Act last March 8. The Act had been passed in 2010 by both the Senate and the House of Representatives, but was vetoed by the president on November 12. The House of Representatives overrode the veto in December, and the Senate subsequently did the same.⁷²¹ The Telecommunications Act that was passed limits all community, educational, association, and citizen radios to 50 to 300 watts of power, without distinction, and restricts the broadcasting of private and state advertising on those stations. It also imposes a prison term of up to two years, or a fine ranging from 300 to 500 times the daily minimum wage, on persons operating without a license or

⁷¹⁹ Infobae. January 12, 2011. *Bomba contra canal de televisión en Uruguay*. Available at: <http://america.infobae.com/notas/17258-Bomba-contra-un-canal-de-televisin-en-Paraguay>; Inter-American Press Association (IAPA). January 13, 2011. *Condena la SIP atentado contra canal de TV en Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4506&idioma=sp; Federación de Periodistas de América Latina y el Caribe. Undated. *Periodistas de Paraguay condenan ataque a Canal 9*. Available at: http://www.fepalc.org/noticias_det.php?Itemid=1044

⁷²⁰ Sindicato de Periodistas del Paraguay [Union of Paraguayan Journalists]. May 31, 2011. *SPP repudia amenaza de Gobernador Aguinalde contra periodistas de Ciudad del Este*. Available at: <http://periodistaspy.blogspot.com/2011/05/sindicato-repudia-amenaza-de-gobernador.html#more>; ABC Color. May 31, 2011. *Fiscal investiga amenaza a periodistas de A. Paraná*. Available at: <http://www.abc.com.py/nota/fiscal-investiga-amenaza-a-periodistas-de-a-parana/>; Última Hora. May 30, 2011. *Periodista denuncia a gobernador por amenaza de muerte*. Available at: <http://www.ultimahora.com/notas/433233-Periodista-denuncia-a-gobernador-por-amenaza-de-muerte->

⁷²¹ EFE News Service. March 8, 2011. *El Congreso de Paraguay ratifica el proyecto que restringe a las radios comunitarias*. Available at: http://www.google.com/hostednews/epa/article/ALeqM5jXD9p-C6nLP2C-mmAm73_C4PjK2Q?docId=1480860; Última Hora. March 9, 2011. *Senado da golpe de gracia a las radios comunitarias*. Available at: <http://www.ultimahora.com/notas/410014-Senado-da-golpe-de-gracia-a-las-radios-comunitarias>; Última Hora. November 12, 2010. *Lugo veta el proyecto que modificaba la Ley de Telecomunicaciones*. Available at: <http://www.ultimahora.com/notas/377053-Lugo-veta-el-proyecto-que-modificaba-la-Ley-de-Telecomunicaciones>

prior authorization from the National Telecommunications Commission.⁷²² In the opinion of the Office of the Special Rapporteur, the indiscriminate restrictions on power, the prohibitions against access to advertising funds, and the use of the criminal law to penalize violations of the radio broadcasting system are aspects of the Act that are problematic in light of the American Convention on Human Rights. Those provisions establish distinctions that tend to exclude or limit the participation in public discourse of certain speech that is channeled through non-profit community media. In addition, the establishment of criminal penalties for any private radio is a disproportionate response to an infraction for which it is not even required to prove specific harm. The state has the obligation to establish a regulatory framework that encourages free, open, plural, and uninhibited speech. Private media must be able to rely on guarantees that allow them to operate sufficiently and not to be treated in a discriminatory manner. In this sense, the State must protect community media, as they are outlets for the excluded social groups and communities that are often absent from public debate and whose inclusion is imperative in every democratic state. The Office of the Special Rapporteur urges the Paraguayan State to amend the law in accordance with the inter-American standards on the protection of the right to freedom of expression, and reiterates its offer of technical support in the interest of securing compliance with the principles of pluralism and diversity that must guide regulation of the use of the radio spectrum.⁷²³

21. Peru

A. Developments

468. The Office of the Special Rapporteur recognizes that on July 25 the Congress of the Republic of Peru took an important step in approving an advisory opinion that would amend Articles 130 and 132 of the Criminal Code to make criminal defamation offenses punishable by community service and fines rather than incarceration. Nevertheless, on July 27, on his last day in office, President Alan García vetoed the bill, and it was returned to Congress.⁷²⁴

469. On February 1, the Temporary Criminal Chamber of the Supreme Court vacated the acquittal of Luis Valdez, the former mayor of the municipal district of Coronel Portillo. Valdez had been charged as the alleged mastermind of the April 21, 2004 murder of journalist Alberto Rivera Fernández. According to the information received, the high court ordered a new trial, in which Zoilo Ramírez Garay is also being tried. Days prior to his murder, journalist Alberto Rivera Fernández had reportedly criticized the municipal government and linked high-ranking local authorities to drug trafficking activities.⁷²⁵

⁷²² Official Gazette of the Republic of Paraguay. March 30, 2011. Law 4179, amending the Telecommunications Act. Available at: <http://www.presidencia.gov.py/v1/wp-content/uploads/2011/03/gaceta30marzopm.pdf>

⁷²³ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 366 and 367. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁷²⁴ Standing Committee of the Congress of the Republic. *Law amending the Criminal Code with respect to offenses against honor*. July 26, 2011. Available at: http://www.voltairenet.org/IMG/pdf/Difamacion_sin_pena_privativa_II.pdf. See also: Official Letter 180-2011-PR from President Alan García Pérez and Minister of Justice Rosario del Pilar Fernández Figueroa to the Head of Congress, Daniel Abugattás Majluf. July 27, 2011. Available at: <http://blog.pucp.edu.pe/media/2841/20110927-Observacion%20presidencial.pdf>; EFE News Service. July 29, 2011. *AGP observó despenalización de la difamación a última hora*. Available at: <http://noticias.terra.com.pe/agg-observo-despenalizacion-de-la-difamacion-a-ultima-hora,b1a2a0e927a91310VgnVCM10000098f154d0RCRD.html>

⁷²⁵ RPP Radio. May 16, 2011. *Inició nuevo juicio oral a Luis Valdez por asesinato de periodista*. Available at: http://www.rpp.com.pe/2011-05-16-inicio-nuevo-juicio-oral-a-luis-valdez-por-asesinato-de-periodista-noticia_365931.html; La República. February 1, 2011. *Luis Valdez volverá a juicio por caso de periodista asesinado*. Available at: <http://www.larepublica.pe/01-02-2011/luis-valdez-volvera-juicio-por-caso-de-periodista-asesinado>; La Primera. February 2,

470. The Office of the Special Rapporteur learned of the judgment handed down on October 28, 2011 by the Temporary Criminal Chamber of the Supreme Court acquitting journalist Paul Garay Ramírez of the offense of defamation and vacating in its entirety the July 27, 2011 judgment of the Ucayali Superior Court that had affirmed his conviction.⁷²⁶ The journalist had reportedly been sentenced to 18 months in prison and ordered to pay a fine of 20,000 nuevos soles (approximately US \$7,400) in civil damages.⁷²⁷

B. Murders

471. The Office of the Special Rapporteur expresses its deep concern over the murders of three journalists in Peru in 2011 that may be related to the victims' professional work. This office reminds the State of its obligation to investigate the crimes diligently and exhaustively, identify the direct perpetrators and masterminds, prosecute them and, if appropriate, impose proportionate penalties. Such actions are essential to prevent impunity and to keep these types of acts from being repeated.

472. The Office of the Special Rapporteur was informed of the murder of journalist Julio Castillo Narváez, which occurred on May 3 in Virú, in the department of La Libertad. According to reports, the journalist was eating lunch at a restaurant when several men came in, pretending to be patrons, and suddenly shot and killed him. The victim's cell phone was reportedly found at the scene, and was found to contain a message with a death threat. According to reports, Julio Castillo Narváez had been practicing journalism for over 20 years. He was the host of the radio program "*Noticiero Ollantay*," and he maintained a critical stance toward the local authorities of La Libertad. *Radio Ollantay* reportedly confirmed to Peruvian media that the journalist had been receiving threats constantly since March, when he had done an audio broadcast that implicated some government employees of La Libertad in possible irregularities. According to the information received, at least one of the perpetrators, a 17-year old minor, was tried and convicted, and was sentenced to six years in a juvenile detention center. In addition, another individual suspected of having been involved in the murder was reportedly arrested by police and is awaiting trial.⁷²⁸

473. The Office of the Special Rapporteur learned of the murder of journalist Pedro Flores Silva, which occurred in Casma, department of Ancash, on September 8. According to the information received, on the night of September 6, a masked individual intercepted the journalist near his house and shot him twice. One of the bullets perforated vital organs, and he died on September 8 at the Chimbote Regional Hospital. Pedro Flores was the director of the program "*Visión Agraria*" on the local *Canal 6* station. The journalist's wife stated that her husband had

...continuation

2011. *Anulan sentencia absolutoria contra Valdez*. Available at: http://www.diariolaprimeraperu.com/online/politica/anulan-sentencia-absolutoria-contravaldez_79189.html

⁷²⁶ Supreme Court of Justice of the Republic. Transitory Criminal Chamber. October 28, 2011. R.N. No 2436-11. Available at: http://historico.pj.gob.pe/CorteSuprema/documentos/SPT_R_N_N_2436_2011_UCAYALI.pdf; National Association of Journalists of Peru (ANP). October 28. *Corte Suprema absolvió al periodista Garay Ramírez*. Available at: <http://www.anp.org.pe/noticias/nacionales/891-corte-suprema-absolvio-a-periodista-paul-garay-ramirez>

⁷²⁷ Supreme Court of Justice of the Republic. Transitory Criminal Chamber. October 28, 2011. R.N. No 2436-11. Available at: http://historico.pj.gob.pe/CorteSuprema/documentos/SPT_R_N_N_2436_2011_UCAYALI.pdf

⁷²⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 6, 2011. Press Release R41/11. *Office of Special Rapporteur Condemns Murder of Journalist in Peru*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=841&IID=2>; Correo. July 17, 2011. *Condenan al asesino de periodista en Perú*. Available at: <http://diariocorreo.pe/nota/21486/condenan-al-asesino-de-periodista-en-viru/>; Inter-American Press Association (IAPA). June 23, 2011. *Cae otro periodista sospechoso por la muerte de periodista peruano*. Available at: <http://www.impunidad.com/noticia.php?id=729&idioma=sp>

received several death threats during the previous two months. The journalist reportedly had aired several news pieces relating to alleged irregularities in the municipal district government of Comandante Noel. He was facing a criminal case brought by the mayor of that district.⁷²⁹ In September, police reportedly arrested three direct perpetrators of the crime, and recovered the murder weapon.⁷³⁰

474. The Office of the Special Rapporteur was informed of the September 14 murder of journalist José Oquendo Reyes in Pueblo Nuevo, in the province of Chincha. According to the information received, Oquendo Reyes was walking near his house when he was ambushed by unknown assailants on a motorcycle who shot him at close range. One of the victim's sons came to his aid and took him to the hospital, where he died. The journalist was the director and host of "*Sin Fronteras*," a program on *BTV Canal 45* of Chincha. According to reports, he had recently done an exposé on his program about alleged administrative mismanagement in the Office of the Mayor of Chincha. In addition to his journalistic activities, Oquendo Reyes also worked as a construction site foreman.⁷³¹

475. According to the ninth principle of the IACHR's Declaration of Principles on Freedom of Expression, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Assaults and threats against journalists and the media

476. The Office of the Special Rapporteur learned of an incendiary bomb attack on the building that houses the newspaper *Voces* on March 5 in Tarapoto, San Martín. According to the information received, unknown persons hurled three explosive devices at the building in the early morning hours, causing slight injuries to two workers who were printing the paper at the time. The attack occurred days after the publication of several articles on the alleged corrupt acts supposedly committed by a candidate to Congress. Also, the editorial director of *Voces* had reportedly received

⁷²⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 13, 2011. Press Release R101/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Peru*. Available at: <http://www.cidh.oas.org/relatoria/artListCat.asp?year=2011&countryID=28&IID=2&catID=1>; Committee to Protect Journalists (CPJ). September 8, 2011. *Periodista peruano muere tras ataque armado*. Available at: <http://cpj.org/es/2011/09/periodista-peruano-muere-tras-ataque-armado.php>; El Comercio. September 8, 2011. *Periodista falleció tras ser baleado por desconocidos en Casma*. Available at: <http://m.elcomercio.pe/peru/1281624/noticia-periodista-se-encuentra-grave-baleado-desconocidos-casma>

⁷³⁰ Reporters Without Borders. September 20, 2011. *Detienen a tres presuntos autores materiales del asesinato de un periodista; riesgo de presión sobre los investigadores*. Available at: http://es.rsf.org/peru-urge-que-los-poderes-publicos-09-09-2011_40954.html; Instituto Prensa y Sociedad (IPYS). September 20, 2011. *Caen autores materiales de asesinato de periodista*. Available at: http://www.ifex.org/peru/2011/09/20/suspects_arrested/es/; Crónica Viva. September 17, 2011. *Caen "El Viejo" y "Macuto": asesinos de Pedro Flores Silva*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/28087-cae-el-viejo-sujeto-planeo-crimen-de-pedro-flores-silva>

⁷³¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 20, 2011. Press Release R103/11. *Office of the Special Rapporteur for Freedom of Expression Condemns Third Murder of a Journalist in Peru in 2011*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=869&IID=1>; Instituto Prensa y Sociedad (IPYS). September 15, 2011. *Comunicador es asesinado frente a su casa*. Available at: <http://www.ipys.org/index.php?q=alerta/853>; RPP. September 14, 2011. *A balazos asesinan a trabajador de construcción civil en Chincha*. Available at: http://www.rpp.com.pe/2011-09-14-a-balazos-asesinan-a-trabajador-de-construccion-civil-en-chincha-noticia_403917.html; Infobae. September 16, 2011. *Preocupa la violencia regional contra periodistas*. Available at: <http://america.infobae.com/notas/33697-Preocupa-la-violencia-regional-contra-periodistas>

death threats on his cell phone following the publication of the articles. The National Police pledged to investigate the attack and provide security to the newspaper.⁷³²

477. The Office of the Special Rapporteur was informed of various assaults on journalists, especially in certain regions. In the department of Ancash, the Office of the Special Rapporteur learned of the January 14, 2011 assaults on journalists Josué Ibarra, of the newspaper *La Industria*; Edwin Azaña, a correspondent for *América Televisión*; Nancy Arellano, a correspondent for *Canal N*, and Guillermo Napa, a cameraman for *Canal 25*.⁷³³ It also received reports of the assault on photographer Paul Meza Castañeda, of *Diario Correo* of Chimbote, by the National Police on February 17⁷³⁴; and the assault on Miguel Alcántara, of the newspaper *Correo*, of Chimbote, while he was covering a protest of neighbors of the regional president of Ancash on May 21, 2011.⁷³⁵

478. In the department of San Martín, the Office of the Special Rapporteur learned of the attack against the news director of *Radio Televisión Nor Selva*, Juan Vela Castro, by a provincial attorney on January 17, 2011.⁷³⁶ In the department of Amazonas, the Office of the Special Rapporteur was informed of the attacks on journalists Manuel Saldaña García and Julio César Mendoza Escobar, hosts of the program *El Matador*, on radio *Nova Star*, on March 5 in Alto Amazonas,⁷³⁷ and of threats against journalists Segundo Alvines and Braulio Rojas Núñez, hosts of

⁷³² Committee to Protect Journalists (CPJ). March 9, 2011. *Diario peruano atacado; editor amenazado*. Available at: <http://cpj.org/es/2011/03/diario-peruano-atacado-editor-amenazado.php>; Regional Council of the Journalists' Guild of San Martín. March 5, 2011. *Pronunciamiento*. Available at: <http://www.diariovoces.com.pe/?p=25402>

⁷³³ Police officers guarding President Alan García during a presidential trip reportedly struck the journalists when they attempted to approach the president at the end of a press conference. National Association of Journalists of Peru (ANP). Undated. *Policías agreden a periodistas durante rueda de prensa de Jefe de Estado*. Available at: <http://www.anp.org.pe/ofip/alertas/745-policias-agreden-a-periodistas-durante-rueda-de-prensa-de-jefe-de-estado>; La Primera. February 1, 2011. *Golpean a periodistas*. Available at: http://www.diariolaprimerape.com/online/pataditas/pataditas_79074.html

⁷³⁴ In the province of Santa, members of the National Police reportedly beat and fired shotgun pellets at the photographer when he attempted to photograph an incident in which several police officers allegedly assaulted a worker on strike at an agro-industrial company. The police reportedly stated that the incident was an indirect and unintentional consequence of the police action. Instituto Prensa y Sociedad (IPYS). February 18, 2011. *Policía dispara perdigones a periodista*. Available at: <http://www.ipys.org/index.php?q=alerta/301>; National Association of Journalists of Peru (ANP). Undated. *Dispara perdigones policía contra reportero gráfico*. Available at: <http://www.anp.org.pe/noticias/nacionales/764>

⁷³⁵ According to the information received, César Álvarez Aguilar, the regional president of Ancash, allegedly insulted the journalist and ordered his security staff to forcibly move him away from his residence. A uniformed man reportedly pushed the journalist while another person reportedly threw sand at him, and several other individuals reportedly chased him with the intention of beating him. *Correo*. May 23, 2011. *Presidente regional César Álvarez ordena agredir a periodista de Correo*. Available at: <http://diariocorreo.pe/nota/10375/presidente-regional-cesar-alvarez-ordena-agredir-a-periodista-de-correo/>; Instituto Prensa y Sociedad (IPYS). May 23, 2011. *Presidente regional manda a agredir a reportero de prensa*. Available at: <http://www.ipys.org/index.php?q=alerta/618>

⁷³⁶ On January 17, an attorney from the province of Rioja reportedly attacked Vela with a tire iron after Vela had criticized the attorney's performance in a court case. The attacker reportedly broke a window of the journalist's house, kicked a motorcycle to pieces, uttered death threats, and broke the victim's arm when he tried to cover his head. Vela requested police protection and filed a criminal complaint against the perpetrator for attempted murder and other charges. National Association of Journalists of Peru (ANP). Undated. *Agreden físicamente a director informativo de radio televisión "Nor Selva"*. Available at: <http://www.anp.org.pe/ofip/alertas/730-agreden-fisicamente-a-director-informativo-de-radio-television-qnor-selvaq>; Inter-American Press Association (IAPA). April 2011. *Information by Country: Perú*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=46&infoid=813&idioma=sp

⁷³⁷ According to the information received, unknown persons reportedly ambushed and assaulted the journalists. Saldaña managed to escape, but Mendoza received kicks and punches that left him unconscious. The day of the attack, the journalists had apparently reported on administrative irregularities in the provincial government of Alto Amazonas. La Primera. March 8, 2011. *Agreden a periodistas radiales en Yurimaguas*. Available at: http://www.diariolaprimerape.com/online/nacional/agreden-a-periodistas-radiales-en-yurimaguas_81368.html; National Association of Journalists of Peru (ANP). Undated. *Golpean y dejan inconsciente a periodista*. Available at: <http://www.anp.org.pe/ofip/alertas/788-golpean-y-dejan-inconsciente-a-periodista>

the program *Hits Star Noticias*, on the Bagua radio station *Hits Star*, on September 24.⁷³⁸ The Office of the Special Rapporteur was also informed of assaults on journalist Julio César Mundo Isique, of *Radio Paraíso*, outside the municipal building in Huaura, on April 3,⁷³⁹ and journalist Carlos Camacho Sánchez, of *Panamericana Televisión*, at the entrance to his house on October 9.⁷⁴⁰ In the region of Tumbes, journalists Lesly Ventura, of the newspaper *Correo*, and Marlon Castillo, of the newspaper *Tumbes 21* were assaulted on April 19.⁷⁴¹ Journalist Mario Suárez Romero, director of the program *La Hora de la Verdad* on *Radio Satélite*, was assaulted on May 4;⁷⁴² and journalist Robert Jenner Carrasco Huamán, of *Lorito*, who was shot and wounded by unknown persons on October 23.⁷⁴³ In Junín, four journalists from the province of Huancayo were reportedly assaulted by members of the police while covering a protest involving students from the National University of Central Peru on June 22.⁷⁴⁴ In Arequipa, the mayor of the district of Chala allegedly assaulted reporter Silvana

⁷³⁸ The journalists reportedly received the death threat on leaflets left under the doors of their houses, which warned the journalists that they would be killed if they did not leave the news program. According to reports, the threat arrived after they had publicized complaints of alleged irregular acts in the provincial government of Bagua. Instituto Prensa y Sociedad (IPYS). September 27, 2011. *Con panfletos amenazan de muerte a periodistas*. Available at: <http://www.ipys.org/index.php?q=alerta/872>

⁷³⁹ According to reports, a member of the security team of Santiago Cano La Rosa, the provincial mayor of Huaura, punched the journalist in the face, causing injuries. The incident reportedly occurred outside the municipal building, when a group of journalists insisted on asking questions that apparently made the mayor uncomfortable. National Association of Journalists of Peru. Undated. *Miembro de seguridad de alcalde lesiona a periodista*. Available at: <http://www.anp.org.pe/ofip/alertas/809-miembro-de-seguridad-de-alcalde-lesiona-a-periodista>; *Crónica Viva*. April 5, 2011. *Huaura: miembro de seguridad de alcalde lesiona a periodista*. Available at: <http://www.cronicaviva.com.pe/index.php/mundo/europa/16694-huaura-miembro-de-seguridad-de-alcalde-lesiona-a-periodista>

⁷⁴⁰ Journalist Carlos Camacho Sánchez was reportedly attacked by at least five men at the entrance to his house in Lima. According to reports, the assailants did not attempt to rob him of any of his belongings, and they concentrated on hitting and kicking him. During the attack, one of the perpetrators reportedly told him to, “quit fucking around.” During the months prior to the attack, the journalist apparently had reported on drug traffickers and public servants who had allegedly committed irregularities. Andean Group for Freedom of Information (EL GALI) October 14, 2010. *Matones agreden y amenazan a periodista de investigación*. Available at: <http://elgali.org/monitoreo/peru/matones-agreden-y-amenazan-periodista-investigacion>; *El Comercio*. October 11, 2011. *Periodista agredido atribuye ataque a denuncias contra alcalde Ocros poma*. Available at: <http://elcomercio.pe/lima/1316202/noticia-periodista-agredido-atribuye-ataque-denuncias-contra-alcalde-ocros-poma>

⁷⁴¹ Unknown persons riding a motorcycle reportedly threw excrement at the journalists after they covered a press conference at the regional government headquarters in Tumbes, at which public servants were reportedly questioned regarding the administration of public funds. *Correo*. April 20, 2011. *Cobarde agresión*. Available at: <http://diariocorreo.pe/nota/4630/cobarde-agresion/>; Instituto Prensa y Sociedad (IPYS). April 20, 2011. *Desconocidos arrojan excrementos a periodistas*. Available at: <http://www.ipys.org/index.php?q=alerta/519>

⁷⁴² On May 4, a police officer reportedly struck the journalist, the director of the program *La Hora de la Verdad*, while he was interviewing relatives of the victims of a traffic accident outside a hospital. *El Mercurio*. Undated. *Capitán de la policía arremete violentamente contra periodista radial*. Available at: http://www.mercurioajamarca.com/index.php?option=com_content&view=article&id=2435:capitan-de-la-policia-arremete-violentamente-contra-periodista-radial&catid=40:style&Itemid=185; Instituto Prensa y Sociedad (IPYS). May 9, 2011. *Capitán de la policía agrede a golpes a periodista radial*. Available at: <http://www.ipys.org/index.php?q=alerta/571>

⁷⁴³ Two unknown persons on board a motorcycle reportedly shot at the journalist and wounded him in the back. According to reports, days prior to the assault the journalist had received a death threat in a text message sent to his cell phone that said “we’re going to shut you up, we’re going to kill you.” The journalist had recently disclosed various reports about matters of public interest. Latin American Observatory for Freedom of Expression (OLA)/IFEX. November 21, 2011. *Atentan contra vida de reportero en Cajamarca*. Available at: http://ifex.org/peru/2011/11/22/carrasco_huaman/es/; *Crónica Viva*. November 29, 2011. *ANP pide investigar atentado criminal contra periodista*. Available at: <http://www.cronicaviva.com.pe/index.php/prensa/27-prensa/32130-anp-pide-investigar-atentado-mortal-contra-reportero>

⁷⁴⁴ Some of the affected individuals reportedly had their work equipment temporarily confiscated. Instituto Prensa y Sociedad (IPYS)/IFEX. June 30, 2011. *Policías agreden a periodistas cuando cubrían protesta*. Available at: http://www.ifex.org/peru/2011/06/30/huancayo_protest/es/; *Ideeleradio*. June 22, 2011. *Huancayo: Policías agredieron a periodistas durante protesta de estudiantes*. Available at: <http://www.ideeleradio.org.pe/web/wNoti.php?idN=2886&tip=red>

Núñez on October 3.⁷⁴⁵ In Ayacucho, Jaime Quispe Olano, director of the newspaper *Jornada*, reportedly received a death threat in a July 20 phone call.⁷⁴⁶

479. The Office of the Special Rapporteur received with concern several reports of assaults and harassment of media and journalists in the context of the presidential elections. For example, on May 10, bodyguards of presidential candidate Keiko Fujimori reportedly hit journalist José Luis Lizárraga and José Mandujano, of the radio stations *Súper Éxito* and *Estudio 99*, when they attempted to record a beating that the security staff was administering to a protestor who opposed Fujimori, in Satipo, Junín.⁷⁴⁷ A photographer from the newspaper *La República*, Miguel Mejía, was reportedly insulted, head-butted and punched on May 29 by a member of candidate Fujimori's campaign staff. This reportedly occurred when the journalist sought to verify a report about the distribution of medical prescriptions with printed pro-Fujimori propaganda in a health campaign for low-income individuals at a high school in Lima.⁷⁴⁸ On May 25, some ten journalists who were covering a political ceremony for Keiko Fujimori's presidential candidacy were reportedly attacked by protestors from *Gana Perú* party in Bambamarca, Cajamarca.⁷⁴⁹ On June 15, journalist Ángel Montenegro Guanilo, host of the program "*Hora 25*" on *Line TV*, was reportedly chased and attacked by three individuals leaving the law school at the Private University of the North (UPN) in Cajamarca. They reportedly took him to a deserted area where they beat and threatened him, and complained of his criticism of events that took place at a political rally.⁷⁵⁰ On May 11, less than one month before the runoff elections, the director of the newspaper *La Primera*, César Lévano, and the chairman of the newspaper's board of directors, Arturo Belaúnde, received funeral wreaths in Lima. This practice was used in earlier decades to intimidate journalists. The wreaths, delivered by an unknown person, came with cards bearing the recipient's names and the acronym RIP (Rest in

⁷⁴⁵ The mayor, Agustín Condori, allegedly assaulted the reporter when she filmed him drinking alcohol during working hours. According to reports, the journalist received several bruises. *La República*. October 5, 2011. *Alcalde en estado de ebriedad agrade a periodista en Arequipa*. Available at: <http://www.larepublica.pe/05-10-2011/alcalde-ebrio-golpea-periodista-en-arequipa>; Andean Group for Freedom of Information (EL GALI). October 5, 2010. *Periodista registra a alcalde ebrio golpeándola*. Available at: <http://www.elgali.org/monitoreo/peru/periodista-registra-alcalde-ebrio-golpeandola>; RPP. October 5, 2010. *Alcalde de Chala en Arequipa ataca a golpes a periodista*. Available at: http://www.rpp.com.pe/2011-10-05-alcalde-de-chala-en-arequipa-ataca-a-golpes-a-periodista-noticia_410155.html

⁷⁴⁶ The same day, his newspaper published an exposé about the alleged criminal acts of a relative of the former president of the regional government. *Info Región*. July 21, 2011. *ANP hará denuncia internacional sobre amenazas a periodista de Ayacucho*. Available at: <http://www.inforegion.pe/portada/109660/anp-hara-denuncia-internacional-sobre-amenazas-a-periodista-de-ayacucho/>; Instituto Prensa y Sociedad (IPYS)/IFEX. July 22, 2011. *Director de diario denuncia ser amenazado de muerte*. Available at: http://www.ifex.org/peru/2011/07/22/quispe_olano_death_threat/es/

⁷⁴⁷ Committee to Protect Journalists (CPJ). June 1, 2011. *Crecen ataques contra la prensa antes de la elección en Perú*. Available at: <http://www.cpj.org/es/2011/06/crecen-ataques-contrala-prensa-antes-de-la-elecci.php>; *La República*. May 11, 2011. *Ponen en duda ataque contra Keiko*. Available at: <http://www.larepublica.pe/impres/ponen-en-duda-ataque-contrakeiko-2011-05-11>

⁷⁴⁸ Instituto Prensa y Sociedad (IPYS). May 30, 2011. *Perú: Reportero gráfico agredido por personero legal del partido Fuerza 2011*. Available at: <http://www.ipys.org/index.php?q=alerta/632>; *La República*. May 29, 2011. *Personero legal de Fuerza 2011 agredió a fotógrafo de La República*. Available at: <http://www.larepublica.pe/29-05-2011/personero-legal-de-fuerza-2011-agredio-fotografo-de-la-republica>

⁷⁴⁹ Instituto Prensa y Sociedad (IPYS). May 27, 2011. *Militantes de Gana Perú agredieron con insultos y rompieron cámara filmadora*. Available at: <http://www.ipys.org/index.php?q=alerta/626>; RPP. May 25, 2011. *Agreden a Keiko Fujimori y le caen huevos a su esposo Mark Vito*. Available at: http://www.rpp.com.pe/2011-05-25-agreden-a-keiko-fujimori-y-le-caen-huevos-a-su-esposo-mark-vito-noticia_368975.html

⁷⁵⁰ Instituto Prensa y Sociedad (IPYS)/IFEX. June 22, 2011. *Universitarios agreden y amenazan a periodista*. Available at: http://www.ifex.org/peru/2011/06/22/montenegro_attacked/es/; *El Mercurio*. Undated. *Estudiantes agreden a periodista*. Available at: http://www.mercurioajamarca.com/index.php?option=com_content&view=article&id=2921:estudiantes-agreden-a-periodista&catid=41:news&Itemid=92

Peace). The newspaper *La Primera* had reportedly endorsed candidate Ollanta Humala.⁷⁵¹ Television journalist Elvis Italo Guillermo Espinoza reported having received telephone and email threats on May 20, after he called candidate Keiko Fujimori into question. A program that he hosted on *Canal 4 JSV* was cancelled on May 17 after he interviewed the former coordinator of the Truth and Reconciliation Commission, who discussed former president Alberto Fujimori's criminal history.⁷⁵²

D. Judicial proceedings

480. The Office of the Special Rapporteur notes President Ollanta Humala's important statements to the effect that he will not use existing criminal provisions to dampen the vigor and openness of public debate, even when it may be offensive. Notwithstanding the president's position, some local public servants have continued the practice of using criminal law to limit the right to freedom of expression, in violation of principles 10 and 11 of the Declaration of Principles on Freedom of Expression.

481. The Office of the Special Rapporteur expresses its concern over the July 6 criminal conviction of journalist Hans Francisco Andrade Chávez of the *América TV* network for the offense of aggravated defamation. According to the information received, the Single-judge Supra-provincial Criminal Court of Chepén sentenced the journalist to two years in prison, with one year suspended, and ordered him to pay 4,000 nuevos soles (approximately US \$1,460) in civil damages; and a fine of 120 times the daily minimum wage, for allegedly having defamed the deputy manager of Public Services of Chepén. The judgment ordered the journalist to broadcast a correction and a public apology through the same media outlet, with his own funds, for two days; appear before the enforcement judge every 30 days; and not to leave his place of residence without authorization from the enforcement judge. The journalist and his attorney announced that they would appeal the decision. The case arose following Andrade's early March interview of a local political leader who, in several media outlets, accused the deputy manager of having threatened him with death. Nevertheless, the complainant brought the action against the *América TV* journalist and not the original source of the alleged defamation.⁷⁵³ On October 12th, the Third Criminal Chamber of Appeal of the Superior Court of Justice of La Libertad overturned the conviction and ordered a new trial.⁷⁵⁴

⁷⁵¹ La República. May 11, 2011. *Envían corona funeraria a periodista César Lévano*. Available at: <http://www.larepublica.pe/11-05-2011/envian-corona-de-funeraria-periodista-cesar-levano-0>; Instituto Prensa y Sociedad (IPYS). May 11, 2011. *Perú: desconocidos envían coronas fúnebres a director y propietario de diario la Primera*. Available at: <http://www.ipys.org/index.php?q=noticia/582>

⁷⁵² Committee to Protect Journalists (CPJ). June 1, 2011. *Crecen ataques contra la prensa antes de la elección en Perú*. Available at: <http://www.cpj.org/es/2011/06/crecen-ataques-contra-la-prensa-antes-de-la-elecci.php>; Instituto Prensa y Sociedad (IPYS). May 30, 2011. *Periodista denuncia amenazas tras cierre de programa; militantes del partido Gana Perú agreden a periodistas con insultos*. Available at: http://www.ifex.org/peru/2011/05/30/guillermo_espinoza_threatened/es/

⁷⁵³ Single-judge Supra-provincial Criminal Court of Chepén and Pacasmayo. Decision number three of July 6, 2011. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IACHR. Office of the Special Rapporteur for Freedom of Expression. July 20, 2011. Press Release R71/11. *Office of the Special Rapporteur Expresses Concern over Criminal Conviction of Television Journalist in Peru*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=856&IID=2>; Instituto Prensa y Sociedad (IPYS). July 11, 2011. *Condenan a prisión a periodista por denuncia que no hizo*. Available at: <http://www.ipys.org/index.php?q=alerta/715>; Committee to Protect Journalists (CPJ). July 14, 2011. *El CPJ condena sentencia por difamación criminal en Perú*. Available at: <http://cpj.org/es/2011/07/el-cpj-condena-sentencia-por-difamacion-criminal-e.php>

⁷⁵⁴ Superior Court of Justice of La Libertad. Third Criminal Chamber of Appeal. Resolution No. 11 of October 12, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; National Association of Journalists of Peru (Asociación Nacional de Periodistas del Perú, ANP). Office of Journalists' Human Rights. October 25, 2011. *Sala Penal anula sentencia de tribunal que condenó periodista*. Available at: <http://ofip.blogspot.com/2011/10/alerta-peru-chepen-trujillo-sala-penal.html>

482. According to information received, on September 22 the Sixth Single-judge Criminal Court for the region of Arequipa convicted Fritz Du Bois, the director of the newspaper *Perú 21*, and Gessler Ojeda, the paper's Arequipa correspondent, to two years in prison, all suspended, for the offense of defamation; they were also ordered to pay 30,000 nuevos soles (about US \$10,800) in civil damages.⁷⁵⁵

483. The tenth principle of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

484. The Civil and Criminal Appeals Chamber of Utcubamba of the Superior Court of Justice of Amazonas reversed the June 7 decision in which a complaint alleging aggravated theft against Aurora Doraliza Burgos de Flores, the holder of the permit for the radio station radio *La Voz* in Bagua, was ruled inadmissible. According to the information received, this decision reopened the court case against the station, whose permit to provide radio broadcasting services had been cancelled in June of 2010 for allegedly having broadcast content that incited violence in the Bagua uprising of June 5, 2009. The sanction against the radio was then lifted in October of 2010 by a decision of the Ministry of Transportation and Telecommunications. After having prevailed in several administrative and judicial proceedings, there was still a criminal complaint for aggravated theft of radio spectrum pending against the licensees, including Aurora Burgos. The prosecutor's office sought the imposition of a four-year prison sentence and 3,000 soles (about US \$1,100) in civil damages. Burgos's defense counsel filed a motion to dismiss based on the inadmissibility of the claim, and on May 3, the Utcubamba court ruled in Burgos's favor. However, the prosecutor's office appealed, and on June 7 the Superior Court of Justice of Amazonas reversed that decision.⁷⁵⁶ A court hearing on the complaint alleging aggravated theft of radio spectrum was scheduled for November 15, 2011, but had to be continued due to the prosecutor's absence.⁷⁵⁷

⁷⁵⁵ Superior Court of Justice of Arequipa. Sixth Individual Criminal Court. September 20, 2011. File No. 701-2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; Instituto Prensa y Sociedad (IPYS)/IFEX. September 26, 2011. *Juzgado condena a director de diario y corresponsal*. Available at: http://www.ifex.org/peru/2011/09/26/peru_21/es/; El Comercio. September 23, 2011. *Condenan a dos periodistas de "Perú 21" a prisión suspendida*. Available at: <http://elcomercio.pe/opinion/1307079/noticia-condenan-dos-periodistas-peru-21-prision-suspendida-1>; RPP. September 23, 2011. *Condenan a periodistas por difamación*. Available at: http://www.rpp.com.pe/condenan-a-periodistas-de-peru21-por-difamacion-noticia_406491.html

⁷⁵⁶ Chamber of Criminal and General Appeals of Utcubamba. Resolution No. 5 of June 7, 2011. Available in the files of the Office of the Special Rapporteur for Freedom of Expression; Instituto Prensa y Sociedad (IPYS)/IFEX. June 17, 2011. *Revocan resolución que exculpaba de delito a concesionaria de radio La Voz de Bagua*. Available at: http://www.ifex.org/peru/2011/06/17/ruling_revoked/es/; Radio "La Voz" de Bagua Grande. June 17, 2011. *Amenaza de prisión contra Aurora Burgos*. Available at: <http://radiolavozbaguagrande.blogspot.com/2011/06/amenaza-de-prision-contra-aurora-burgos.html>; IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 368 and 369. Available at: <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/Informe%20Anual%202010%20ESPI.pdf>

⁷⁵⁷ Instituto Prensa y Sociedad (IPYS). November 15, 2011. Perú: *Suspenden audiencia judicial en caso de radio La Voz de Bagua*. Available at: <http://www.ipys.org/?q=noticia/975>; La República. November 16, 2011. *Denuncian acoso a radio La Voz*. Available at: <http://www.larepublica.pe/node/714332/print>

485. The Office of the Special Rapporteur reiterates the obligation of community radio stations to operate in accordance with the laws, but insists that those laws must be consistent with international standards, and must be enforced through proportional administrative sanctions, and not through the application of criminal law.⁷⁵⁸

22. Dominican Republic

486. The Office of the Special Rapporteur received information concerning the August 2 murder of journalist José Agustín Silvestre de los Santos. According to this information, several individuals forced Silvestre de los Santos into a vehicle in the town of La Romana. Hours later his body, bearing several gunshot wounds, was found on the road between La Romana and San Pedro de Macorís. According to the information available, Silvestre was the director of the magazine *La Voz de la Verdad*, and the host of a program of the same name on the *Caña TV* television station. Silvestre practiced critical and investigative journalism, which led him to face court accusations and death threats. In the week leading up to his murder, he reported to the Dominican Association of Journalists that two vehicles had attempted to intercept him on July 23, 2011. The Attorney General of the Dominican Republic, Radhamés Jiménez, announced the creation of a special investigative commission to solve the case.⁷⁵⁹ The National Police identified at least four men suspected of directly perpetrating the murder, and at the time of this report, all four remained in pretrial detention.⁷⁶⁰ Police authorities stated that the suspected mastermind of the crime is a hotel entrepreneur who reportedly ordered the murder in reaction to an item published in *La Voz de la Verdad*.⁷⁶¹

487. According to information received, alleged police officers reportedly shot and wounded Dominican journalist Francisco Frías Morel in the city of Nagua on January 28. According to the information, Frías Morel and a group of journalists were covering the funeral of a young man who had died in a confrontation, when police officers reportedly attempted to disperse the funeral procession. The journalist was injured by several bullets. The police commander of Nagua, Colonel Juan Antonio Lora Castro, maintained that the police action was not directed against the journalists, but rather was intended to disperse a crowd that it characterized as “unruly.” Frías Morel is the director of *Cabrera FM* radio, writes a news blog, co-produces a news program on *Trébol FM* radio, and is the press advisor to a local senator. According to the information received by the Office of

⁷⁵⁸ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II: 2010 *Special Report on Freedom of Expression in Mexico*. Para. 766. Available at: http://www.cidh.oas.org/annualrep/2010sp/RELATORIA_2010_ESP.pdf

⁷⁵⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2011. Press Release R85/11. *Office of the Special Rapporteur Condemns Kidnapping and Murder of Journalist in Dominican Republic*. August 4, 2011. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=861&IID=2>; Committee to Protect Journalists (CPJ). August 3, 2011. *Critical journalist murdered in Dominican Republic*. Available at: <http://cpj.org/es/2011/08/periodista-critico-asesinado-en-la-republica-domin.php>

⁷⁶⁰ Noticias SIN. Undated. *Apresan a los tres presuntos asesinos del periodista José Silvestre*. Available at: <http://www.noticiassin.com/2011/08/apresan-a-los-tres-presuntos-asesinos-del-periodista-jose-silvestre/>; EFE News Service. August 10, 2011. *Detenidos cuatro de los acusados del asesinato de un periodista dominicano*. Available at: http://noticias.terra.com.co/internacional/detenidos-cuatro-de-los-acusados-del-asesinato-de-un-periodista-dominicano_ea42fb328c4b1310VgnVCM4000009bf154d0RCRD.html

⁷⁶¹ National Police of the Dominican Republic. August 9, 2011. *Policía identifica otros tres de los autores materiales del asesinato del periodista José Silvestre. Los invita a entregarse*. Available at: <http://www.policianacional.gob.do/v2/principal/noticias/20110809-policia-identifica-otros-tres-autores-materiales-asesinato-periodista-jose-silvestre-invita-entregarse.ashx>; Reporters Without Borders. August 11, 2011. *Police name journalist's alleged killers, confirm reporting was motive*. Available at: http://es.rsf.org/republica-dominicana-secuestran-y-asesinan-a-un-03-08-2011_40743.html; Noticias SIN. Undated. *Prisión preventiva de tres meses para uno de los implicados en asesinato del periodista José Silvestre*. Available at: <http://www.noticiassin.com/2011/08/prision-preventiva-de-tres-meses-para-uno-de-los-implicados-en-asesinato-del-periodista-jose-silvestre/>

the Special Rapporteur, the journalist had, in several different media outlets, called into question the police version of the circumstances surrounding the young man's death.⁷⁶²

488. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

489. On February 27, President Leonel Fernández presented the Expression and Communications Media Act, the Radio, Television and Internet Act, and the Audiovisual and Advertising Act to Congress. The Government and the Association of Journalists continue to encourage public debate to publicize and discuss the bills. The Office of the Special Rapporteur invites the Dominican State to broadly disseminate the legislative bills in the interest of promoting an informed and vigorous national debate, and trusts that amendments will be consistent with the international standards on freedom of expression.⁷⁶³ On August 16, Congress began its regular legislative session, and three of the aforementioned bills were pending.⁷⁶⁴ At the time of this writing, there was no additional information about the progress of the initiatives as they work their way through Congress.

23. Trinidad and Tobago

490. The Office of the Special Rapporteur was informed of alleged email threats sent on January 30, 2011 to Omatie Lyder and Anna Ramdass of the *Trinidad Express* newspaper. They are the editor in chief and a journalist, respectively. According to the information received, Lyder and Ramdass received emails with threatening content days after the newspaper had published an article about alleged irregularities in the appointment of a public employee to the Strategic Services Agency, who later resigned from the position. The messages were reportedly sent from an email account under the user name of Janice Thomas. However, the investigation traced the sender of the emails and reportedly determined that the messages had originated from a computer at the home of an adviser to the Prime Minister. The advisor has denied having sent such messages, and her attorneys have asked the newspaper to issue an apology for the statements made against her. In

⁷⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. February 3, 2011. Press Release R05/11. *Office of the Special Rapporteur Expresses Concern Over Attack on Dominican Journalist*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=832&IID=2>; Listín Diario. January 29, 2011. *Se registra balacera en cortejo fúnebre de joven*. Available at: <http://www.listindiario.com.do/la-republica/2011/1/29/175317/Se-registra-balacera-en-cortejo-funebre-de-joven>; Reporters Without Borders. January 31, 2011. *Un periodista hospitalizado tras recibir tiros de la Policía; llamamiento a la vigilancia frente a las fuerzas del orden*. Available at: <http://es.rsf.org/republica-dominicana-un-periodista-hospitalizado-tras-31-01-2011,39427.html>

⁷⁶³ Government Information Center. March 1, 2011. *Presidente somete al Congreso Ley de Estrategia Nacional de Desarrollo*. Available at: <http://www.cig.gob.do/app2/article.aspx?id=20908>; Dominican Association of Journalists. *CDP someterá propuesta de modificación de la ley 10-91*. February 28, 2011. Available at: <http://periodistasnj.blogspot.com/2011/02/cdp-sometera-propuesta-de-modificacion.html>; Periodistas en Español. September 20, 2010. *República Dominicana: oposición a un proyecto de ley sobre libertad de expresión y ejercicio del periodismo*. Available at: <http://www.periodistas-es.org/medios-de-comunicacion/republica-dominicana-oposicion-a-un-proyecto-de-ley-sobre-libertad-de-expresion-y-ejercicio-del-periodismo>; Instituto de Televisión de las Américas. January 6, 2011. *Urge periodistas conozcan proyecto ley audiovisual*. Available at: http://itvlam.com/index.php?option=com_content&view=article&id=164:urge-periodistas-conozcan-proyecto-ley-audiovisual&catid=37:master-en-produccion-de-tv&Itemid=60

⁷⁶⁴ Senate of the Dominican Republic. August 17, 2011. *Congreso tiene pendiente una amplia agenda*. Available at: <http://www.senado.gob.do/senado/Inicio/tabid/40/ctl/ArticleView/mid/439/articleId/384/Congreso-tiene-pendiente-una-amplia-agenda.aspx>

addition, the attorneys requested that the newspaper refrain from publishing any additional stories on the matter, claiming that there is no evidence that she sent the messages.⁷⁶⁵

24. Uruguay

491. The Office of the Special Rapporteur was informed of the June 20 judgment denying a civil claim for US \$40,000 in damages against public television journalist Ana María Mizrahi, filed in 2009 by Celeste Álvarez, a niece of former Uruguayan dictator Gregorio Álvarez. According to the information received, the case stemmed from a television interview that Mizrahi had conducted in May 2007 with a former Tupamaro guerrilla who reportedly confessed to having assassinated the plaintiff's father, a member of the military and brother of the dictator, and stated the reasons for which he had committed the crime. The civil judge Beatriz Venturini ruled in favor of the journalist on the grounds that she had not acted with the intent to cause harm, and that she had acted with rigor and objectivity.⁷⁶⁶

492. The Office of the Special Rapporteur takes note of the process undertaken by the State of Uruguay to conduct a census and regularize community radios, which has reportedly made it possible to authorize the operation of 54 stations since 2010. According to the information received, a new radio regularization process approved on March 23, 2011 recognizes the community nature of the stations and allows them to use an FM radio frequency for a ten-year period. In addition, the State reportedly issued a new call for community projects interested in the allocation of a frequency band to submit the necessary documentation. In order to be considered a community station under Uruguayan law, a station must be collectively owned and have a non-profit, social purpose.⁷⁶⁷

493. The Office of the Special Rapporteur learned of threats reportedly received by journalist Roger Rodríguez following the February 4 publication of the article entitled, "*La ofensiva de los indagables*" ["*Suspects on the Offensive*"], in the magazine *Caras y Caretas*. The article was about the actions of retired members of the military to evade justice for crimes committed during the military dictatorship (1973-1985). According to reports, days after the article was published, a group—in the name of an organization related to former members of the military—posted

⁷⁶⁵ Under the laws of Trinidad and Tobago, threatening another person by any means is punishable by up to 5 years in prison. Antigua Observer. July 17, 2011. *Prime Minister's special adviser demands apology*. Available at: <http://www.antiguaobserver.com/?p=61639%20->; Trinidad Express Newspapers. June 18, 2011. *Sasha under fire*. Available at: http://www.trinidadexpress.com/news/SASHA_UNDER_FIRE-124143579.html; Barbados Free Press. June 23, 2011. *Trinidad & Tobago Police investigate emailed threats to journalists*. Available at: <http://barbadosfreepress.wordpress.com/2011/06/23/trinidad-tobago-police-investigate-emailed-threats-to-journalists/>; Guardian Media. June 22, 2011. *Mohammed's lawyers to CoP: What's the offence*. Available at: <http://www.guardian.co.tt/news/2011/06/22/mohammed-s-lawyers-cop-what-s-offence#st-logo>

⁷⁶⁶ Uruguayan Press Association. June 21, 2011. *La justicia falló a favor de la periodista Ana María Mizrahi*. Available at: <http://www.apu.org.uy/noticias/la-justicia-fallo-a-favor-de-la-periodista-ana-maria-mizrahi>; Últimas Noticias. June 21, 2011. *Fallo a favor de periodista denunciada por difamación*. Available at: <http://www.ultimasnoticias.com.uy/Edicion-UN/articulos/prints-2011jun21/act12.html>; 180. June 20, 2011. *Fallo a favor de la periodista Ana María Mizrahi*. Available at: http://www.180.com.uy/articulo/19690_Fallo-a-favor-de-la-periodista-Ana-Maria-Mizrahi

⁷⁶⁷ Office of the President of the Eastern Republic of Uruguay. April 8, 2011. *Comunicación de DINATEL: Culmina censo de radios comunitarias y se abre nuevo llamado*. Available at: <http://archivo.presidencia.gub.uy/sci/noticias/2011/04/2011040803.htm>; World Association of Community Radio Broadcasters (AMARC). April 20, 2011. *Más de cien emisoras comunitarias han sido regularizadas en todo el país*. Available at: <http://legislaciones.item.org.uy/index?q=node/2687>; La Red 21. March 9, 2011. *El gobierno abrirá nuevo llamado para radios comunitarias*. Available at: <http://www.lr21.com.uy/comunidad/443619-el-gobierno-abrira-nuevo-llamado-para-radios-comunitarias#>; Legislative Branch of the Eastern Republic of Uruguay. Law No. 18.232 of December 22, 2007. *Servicio Radiodifusión Comunitaria*. Available at: <http://www0.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18232&Anchor>

threatening comments against the journalist on the social networking site Facebook that included his personal and family information and the exact address of his house.⁷⁶⁸

494. According to information received, journalist Victor Carrato of the newspaper *La República* received threats after publishing an article on June 17 about contraband cyanide inside a prison. Carrato received two email messages on June 18, allegedly sent by the head of a criminal gang at the prison, warning him to stop investigating the matter and intimidating him by indicating that they knew where he lived. The newspaper condemned the threats and requested a police investigation.⁷⁶⁹

495. According to the information received, on February 14 the 10th criminal duty judge sentenced Álvaro Alfonso to 24 months in prison for the offense of defamation. He will serve the sentence while on supervised release. According to reports, the case arose as a result of the publication of the book entitled "*Secretos del Partido Comunista del Uruguay*" ["*Secrets of the Uruguayan Communist Party*"], in which Alfonso asserted that a member of the Communist Party and former Uruguayan legislator had cooperated with the military in the identification of his comrades while detained during the dictatorship (1973-1985). The Public Prosecutor's Office also requested that all copies of the book be confiscated, but the judge denied the petition, indicating that "preventing the sale of a book would be to disregard freedom of expression." Mr. Alfonso, who was serving as the Mayor of Aguas Corrientes at the time of the decision, appealed the ruling.⁷⁷⁰

496. The tenth principle of the IACHR's Declaration of Principles on Freedom of Expression states that: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

⁷⁶⁸ La Red 21. February 9, 2011. *Amenazan a periodista Roger Rodríguez*. Available at: <http://www.lr21.com.uy/politica/440747-amenazan-a-periodista-roger-rodriguez>; Reporters Without Borders. May 18, 2011. *Roger Rodríguez, la erosión de la impunidad*. Available at: <http://es.rs.f.org/uruguay-roger-rodriguez-la-erosion-de-la-18-05-2011,40306.html>; Caras y Caretas. February 4, 2011. *La ofensiva de los indagables*. Available at: <http://200.40.211.253/detail.asp?IdEdition=102&NewsId=772&Portal=1>

⁷⁶⁹ The first threatening email said: "Very good article. And thank you for the information on the traitor; my police informants also keep me informed. I'll keep it short... I know where to find you, and I'm going to send someone to get you; I'm fed up with you meddling in my business... I also have something on Pereira Cuadra to get him thrown out of the national bureau [of prisons]. And I'll take care of Piriz Brum in a few days... Get your life insurance ready." Five minutes later, another email demanded: "And try cleaning up with your elbow what you wrote with your hands... because I'll even find your house if I want to." La Red 21. June 21, 2011. *Investigan amenazas de muerte contra periodista de LA REPÚBLICA*. Available at: <http://www.lr21.com.uy/justicia/458768-investigacion-amenazas-de-muerte-contra-periodista-de-la-republica>; Montevideo.Com. June 21, 2011. *Con libertad ofendo y no temo*. Available at: http://www.montevideo.com.uy/noticias/140969_1.html; La Red 21. June 17, 2011. *Entregan ½ kilo de cianuro en Libertad*. Available at: <http://www.lr21.com.uy/justicia/458062-entregan-12-kilo-de-cianuro-en-libertad>

⁷⁷⁰ Inter-American Press Association (IAPA). April 2011. *Informes por país: Uruguay*. Available at: http://www.sipiapa.org/v4/det_informe.php?asamblea=46&inford=816&idioma=sp; LR21. February 17, 2011. *Juez rechazó requisa de libros*. Available at: <http://www.lr21.com.uy/politica/441668-juez-rechazo-requisa-de-libros>; Office of the President of the Eastern Republic of Uruguay. Undated. *Municipios del Departamento de Canelones*. Available at: <http://www.presidencia.gub.uy/wps/wcm/connect/presidencia/portalpresidencia/intendencias/municipios/municipios-canelones>

25. Venezuela⁷⁷¹

A. Attacks on the media and journalists

497. The Commission was informed of the murder of the journalist, Wilfred Ojeda Peralta, who was found dead in the early hours of May 17 in the municipality of Revenga in the State of Aragua. At the time, the Special Rapporteurship recognized the rapid intervention of Venezuelan police authorities to shed light on the case and asked that they not disregard the possibility that the murder had been motivated by the victim's work as a journalist.⁷⁷² On June 28, the Scientific, Criminal, and Criminalistics Investigations Corps (CICPC) concluded that two brothers were responsible for the crime and that the murder had been due to a debt that the journalist owed to one of them. The CICPC declared that the case was "solved by the police" and announced that the suspects "were being sought by the First Preliminary Proceedings Court of the State of Aragua."⁷⁷³

498. The IACHR learned of shots fired on the Venezuelan public television station *Vive TV Zulia* on July 31, 2011, injuring two employees of the channel.⁷⁷⁴ According to the information received, two suspects in the shooting at the station were shot down on August 3, 2010 when they were confronted by police.⁷⁷⁵

499. The IACHR was informed of various attacks on media employees by members of the State security forces. On December 6, 2010 in the State of Apure, agents of the Bolivarian National Guard attacked several journalists who were covering a salary protest by State government employees. The Special Rapporteurship learned that several members of the National Guard had beaten the General Secretary of the Apure office of the National Journalists Association, José Ramón González, while trying to arrest him and snatch his photographic equipment. The journalist Aly Pérez of the newspaper *Visión Apureña* was also attacked.⁷⁷⁶ On December 23, 2010 the

⁷⁷¹ This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2011 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

⁷⁷² Ojeda used to write a column titled "Critical Dimension" in the daily newspaper *Clarín* of La Victoria in the state of Aragua, where he frequently questioned governmental authorities. According to the information available, Ojeda was also an activist in the opposition Democratic Action Party (AD) and years earlier had held municipal and regional positions with this political group. IACHR. Office of the Special Rapporteur for Freedom of Expression. May 23, 2011. Press Release R47/11. [Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Venezuela](#); Committee to Protect Journalists (CPJ). May 20, 2011. [Newspaper columnist shot to death in Venezuela](#). Reporters Without Borders. May 19, 2011. [Contract-style Killing of Newspaper Columnist in Aragua State](#).

⁷⁷³ Scientific, Criminal, and Criminalistics Investigations Corps (CICPC). June 28, 2011. [CICPC resuelve el caso del periodista aragüeño de El Clarín](#). [CIPC solves case of Araguan journalist from El Clarín]

⁷⁷⁴ According to the information received, on Sunday morning unknown subjects on board a truck passed in front of the headquarters of the channel in Maracaibo in the state of Zulia, and shot several times as press staff from the station were leaving the building. As a result of the attack, police officer Gustavo Ceballos was shot in the right leg and employee José Brito fractured his leg when he fell from a stairway while trying to protect himself from the bullets. IACHR. Office of the Special Rapporteur for Freedom of Expression, May 23, 2011. Press Release R84/11. [Office of the Special Rapporteur Expresses Concern Regarding Shots Fired at Public Television Station in Venezuela](#); Office of the Attorney General of the Bolivarian Republic of Venezuela. [MP comisionó a dos fiscales para investigar ataque contra Vive TV en el Zulia](#). [Prosecutor's Office commissioned two prosecutors to investigate attack on Vive TV]; Venezolana de Televisión. July 31, 2011. [Dos heridos tras atentado a Vive TV Zulia](#). [Two injured after attack at Vive TV Zulia]; Espacio Público [Public Arena]. August 1, 2011. [Atacan sede de Vive TV en Zulia](#). [Attack on headquarters of Vive TV in Zulia]

⁷⁷⁵ Noticiero Digital. August 4, 2011. [Abatieron a dos de las personas que atacaron a Vive TV](#). [Two people who attacked Vive TV cut down]; La Verdad. August 3, 2011. [Ultiman a involucrados en atentado contra Vive TV](#). [Suspects in attack on Vive TV killed]

⁷⁷⁶ National Association of Journalists (CNP). December 8, 2010. [CNP denuncia atropello de la Guardia Nacional a periodistas en Apure](#). [CNP denounced National Guard abuse of journalists in Apure]; National Association of Journalists (CNP). December 6, 2010. [Agredidos periodistas y sindicalistas durante protesta en San Fernando de Apure](#). [Journalists and

Agence France-Presse (AFP) photographer, Miguel Gutiérrez, received a head wound during a police operation in Caracas to dissolve a demonstration of students opposed to the Universities Law.⁷⁷⁷ On January 15, 2011, according to reports, members of the National Guard attempted to seize the cameras of the photographers, Enio Perdomo, of *El Universal*, and José (Cheo) Pacheco, of *El Universal* and *Últimas Noticias*, while they were covering a protest by relatives of prisoners at the La Planta prison in Caracas.⁷⁷⁸ On March 28, the *Globovisión* journalist, Lorena Cañas, was attacked by police officers of the State of Bolívar while she was covering a demonstration of students demanding the release of the former mayor of the municipality of Sifontes, Carlos Chancellor.⁷⁷⁹

500. The IACHR received information regarding several incidents in which individuals associated with the government had allegedly attacked journalists. On January 20, 2011, vigilantes from the State markets network of the Venezuelan Food Producer and Distributor (PDVAL) struggled with the journalist Gabriela Iribarren from the newspaper *Últimas Noticias* and snatched the notebook where she was noting down product prices in San José, Caracas. As reported to the Special Rapporteurship, on that same day the journalist succeeded in retrieving her notebook and received apologies from PDVAL management.⁷⁸⁰ On January 11, the outgoing President of the Municipal Chamber of Vargas, Miriam González, allegedly attacked the journalist Luisa Álvarez, of the Chamber's press corps, during a meeting during which the new municipal leadership was being elected and installed. As this office learned, González scolded the journalist so that she wouldn't note down her statements, called her a "traitor" and hit her in the face. The journalist received various injuries.⁷⁸¹ On April 1, alleged employees of the state-owned *Petróleos de Venezuela* (PDVSA) attacked a press team from the First Justice party, which was documenting activities of this group in the area around the headquarters of the petroleum company in Caracas.⁷⁸² On April 1,

...continuation

trade unionists assaulted during protest in San Fernando de Apure; Espacio Público. December 7, 2010. [Guardia Nacional agrede a periodistas en Apure](#). [National Guard assaults journalists in Apure]

⁷⁷⁷ BBC World. December 23, 2010. [Venezuela: policía dispersa marcha contra ley de universidades](#). [Venezuela: police disperse march against universities law]; Noticia al Día. December 23, 2010. [Repelen marcha de universitarios en Caracas: Reportan un periodista de AFP herido y dos estudiantes detenidos](#). [Universities march in Caracas repelled: Reports of an AFP journalist wounded and two students detained]; Noticias 24. December 23, 2010. [Fotógrafo de la Agencia AFP recibió una pedrada en la cabeza durante protesta estudiantil](#). [Rock hits AFP photographer in head during student protest]

⁷⁷⁸ Espacio Público. February 4, 2011. [GN intenta despojar de sus equipos a los reporteros gráficos de El Universal y Últimas Noticias](#). [NG tries to take equipment from El Universal and Últimas Noticias photojournalists]; El Informador. January 15, 2011. [Protestas en las afueras de retén de La Planta](#). [Protests outside the La Planta prison]

⁷⁷⁹ When a police officer arrested the cameraman from *Globovisión* and seized the recording equipment, Cañas tried to intervene and was hit about the face and back. The cameraman was later released. The equipment was returned after a military official intervened. National Association of Journalists. March 31, 2011. [Agredida Lorena Cañas de Globovisión en Bolívar](#). [Lorena Cañas of Globovisión attacked in Bolívar]; Espacio Público. March 29, 2011. [Equipo de Globovisión es agredido por la Policía del estado Bolívar](#). [Globovisión team attacked by police in State of Bolívar]

⁷⁸⁰ Instituto Prensa y Sociedad (IPYS). January 24, 2011. [Personal de seguridad agrede a periodista](#). [Security personnel attack journalist]; El Universal. January 27, 2011. [CNP rechaza ola de agresiones en contra de comunicadores](#). [CNP rejects wave of attacks on journalists]

⁷⁸¹ El Universal. January 12, 2011. [Concejo Municipal de Vargas se instaló en medio de trifulca](#). [Vargas Municipal Council installed in the midst of squabble]; Espacio Público. January 26, 2011. [Concejal de Vargas agrede a periodista Luisa Álvarez](#). [Vargas council member attacks journalist Luisa Álvarez]; El Universal. January 27, 2011. [CNP rechaza ola de agresiones en contra de comunicadores](#). [CNP rejects wave of attacks on journalists]

⁷⁸² According to reports, some 40 people, some of them with PDVSA identification, also threw several objects at the journalists, Deyanira Castellanos and Eucaris Perdomo, and the cameraman, Lenín León. Later, at a metro station, part of the press team was surrounded by individuals tied to the government. Police officers intervened to protect the journalists but asked them to turn over the material they had filmed. Espacio Público. April 4, 2011. [Trabajadores de PDVSA agreden a equipo de prensa de Primero Justicia](#). [PDVSA workers attack press team from Primero Justicia]; Knight Center for Journalism in the Americas. April 5, 2011. [Periodistas venezolanos atacados por grupo de presuntos partidarios de Chávez](#). [Venezuelan journalists attacked by groups of alleged Chavez partisans]

a group of alleged sympathizers of the United Socialist Party of Venezuela (PSUV) allegedly attacked the journalists Juan Vicente Maya of the newspaper *Las Noticias de Cojedes* and Rosana Barreto of the daily newspaper *La Opinión*, as well as two other press employees outside the radio station in Cojedes, while they were waiting for the Governor of the State of Miranda, Henrique Capriles Radonsky, who was granting interviews there.⁷⁸³

501. The IACHR was informed of the attack on a team of journalists from *Globovisión* on April 7 in Trujillo, while they were covering a peaceful protest of nursing employees at the Central Hospital of Valera. According to reports to this office, individuals allegedly affiliated with the Bolivarian Union of Nurses physically and verbally attacked the journalist Laura Domínguez and the cameraman Heisser Gutiérrez and snatched their recording equipment.⁷⁸⁴

502. The Special Rapporteurship learned that on February 19 the State channel *Venezolana de Televisión (VTV)*, located in the Los Ruices district of Caracas, was temporarily left without telephone or Internet service after unknown persons deliberately burned the cable equipment from the telephone company, CANTV.⁷⁸⁵

503. On August 13, journalists from the program “Zurda Kondukta” of VTV were attacked in Puerto Ordaz as they were covering the launch of the campaign for Governor of the State of Bolívar of the opposition deputy Andrés Velázquez. According to the information available, the journalists Oswaldo Rivero and Marcos Ramírez were trying to interview those attending the event when several people beat them and seized a video camera.⁷⁸⁶ On September 13, journalists from VTV who were trying to interview the former governor of Zulia and opposition leader, Oswaldo Álvarez Pérez, were attacked and expelled from a location where the 70th Anniversary of the Democratic Action Party was being celebrated. According to reports, the politician tried to hit Oswaldo Rivero and Pedro Carvajalino when the latter called him a “murderer.” Later, those attending the event insulted, pushed, and expelled the journalists from the room and destroyed one of their cameras.⁷⁸⁷

⁷⁸³ Instituto Prensa y Sociedad (IPYS). April 4, 2011. [Simpatizantes del presidente Chávez agreden a periodistas](#). [Sympathizers of President Chávez attack journalists]; Espacio Público. April 11, 2011. [Grupo de oficialistas agrede a comunicadores en el estado Cojedes](#). [Pro-government group attacks journalists in the estate of Cojedes]

⁷⁸⁴ National Association of Journalists, Zulia section – Circle of Graphic Reporters of Venezuela. April 8, 2011. [CNP y CRGV Trujillo rechazan vil agresión a reporteros de Globovisión](#). [Trujillo CNP and CRGV reject vile attack on Globovisión reporters]; Espacio Público. April 7, 2011. [Agreden a corresponsal de Globovisión en Trujillo](#). [Globovisión correspondent attacked in Trujillo]

⁷⁸⁵ Estamos en línea. February 19, 2011. [Armario de CANTV fue completamente quemado. Vandalismo deja sin servicios a VTV y a 900 usuarios](#). [CANTV equipment cabinet completely burned. Vandalism knocks out services to VTV and 900 users]; Instituto Prensa y Sociedad (IPYS). February 23, 2011. [Canal estatal sufre acto vandálico](#). [State-run channel hit by vandalism]

⁷⁸⁶ Espacio Público. August 23, 2011. [Agredido equipo reporteril de VTV en el estado Bolívar](#). [VTV reporter team attacked in State of Bolívar]; Venezolana de Televisión. August 14, 2011. [Zurda Kondukta Último domingo Agresiones Podemos Andrés Velásquez en Bolívar](#). [Zurda Kondukta Last Sunday Attacks We can Andrés Velásquez in Bolívar] Minute 9:00 *et seq*; Correo del Orinoco. August 13, 2011. [Opositores agredieron a equipo reporteril](#). [Team of reporters attacked by the opposition]

⁷⁸⁷ Espacio Público. September 15, 2011. [Reporteros de VTV agredidos durante celebración de 70 aniversario de Acción Democrática](#). [VTV reporters attacked during celebration of 70th anniversary of Democratic Action]; National Association of Journalists. September 15, 2011. [CNP protesta por agresión a trabajadores de VTV](#). [CNP protests attack on VTV employees]; Venezolana de Televisión (VTV). September 13, 2011. [Pedro Carvajalino y Oswaldo Rivero atacados por las hienas de Acción Democrática](#). [Pedro Carvajalino and Oswaldo Rivero attacked by Democratic Action hyenas] Minute 23:30.

B. Threats and harassment

504. The IACHR was informed of death threats received via Twitter on January 24 by Rayma Suprani, a journalist and cartoonist at the daily *El Universal*. The threats were sent from an account in the name of a recognized pro-government leader and activist. Based on the information received, the reason for the threatening message was a critical cartoon Suprani published about a submarine cable that will link telecommunications between Venezuela, Cuba and Jamaica.⁷⁸⁸ In December 2010 and January 2011, the secretary of Photojournalists of the National Union of Press Employees (SNTPE), Nilo Jiménez, received anonymous phone calls with intimidating messages and death threats, in which, according to the information provided to this office, he was warned to stop gathering information for a book he is preparing that includes a photographic compilation regarding violations of freedom of expression in Venezuela.⁷⁸⁹ According to the information received, the reporter from the daily *El Carabobeño*, Kevin García, received a death threat on February 22 from two individuals who warned that they would kill him if he continued writing about the municipality of Guacara in the State of Carabobo.⁷⁹⁰

505. The U.S. journalist, John Enders, claimed he was harassed by agents of the Bolivarian Intelligence Service (SEBIN). According to the information received, on February 13 the journalist was in the city of Sabaneta, State of Barinas, when he realized he was being followed and photographed by two unknown men.⁷⁹¹

506. The IACHR received information regarding the intervention or hacking, since August 31, of the electronic accounts of journalists, writers, human rights defenders, and politicians on social networks, blogs, and e-mail accounts. The anonymous e-attack consisted of the insertion of text with insults, threats and mudslinging, as well as the disclosure of private information, destruction of data and threats to publicly identify the information sources of those affected. According to the reports, at least 14 people who expressed critical or independent positions regarding the government were subject to the attack.⁷⁹² An anonymous group called N33 was said to be responsible for executing the attacks. In a communication from the perpetrators issued on September 2 and read on the state-owned broadcaster VTV, the N33 group alleged that the purpose

⁷⁸⁸ In the cartoon, Suprani drew a cable with the title "Cable to Cuba" alongside a noose with the text: "Cable to Venezuela." One of the threatening messages said: "We're going to put that noose on you unpatriotic X, Yankee-lover X, unfaithful to Vzla (Venezuela) X." International Freedom of Expression Exchange (IFEX)/IPYS. February 1, 2011. [Amenazan a caricaturista via Twitter](#). [Cartoonist threatened via Twitter]; Espacio Público. January 26, 2011. [La caricaturista Rayma es amenazada de muerte por @LinaNRonUPV](#). [Cartoonist Rayma receives death threats via @LinaNRonUPV]

⁷⁸⁹ Espacio Público. January 24, 2011. [Periodista del SNTPE recibe amenazas de muerte](#). [SNTPE journalist receives death threats]; International Freedom of Information Exchange (IFEX)/IPYS January 26, 2011. [Amenazan de muerte a secretario del Sindicato de Trabajadores de la Prensa](#). [Secretary of Union of Press Employees receives death threats]

⁷⁹⁰ International Freedom of Expression Exchange (IFEX)/Instituto Prensa y Sociedad (IPYS). March 1, 2011. [Amenazan de muerte a pasante del diario "El Carabobeño"](#). ["El Carabobeño" intern receives death threats]; Espacio Público. March 1, 2011. [Amenazan de muerte a reportero de diario El Carabobeño](#). ["El Carabobeño" reporter receives death threats]

⁷⁹¹ The journalist discussed the event with representatives of the opposition party COPEI he was interviewing, and those representatives photographed the unknown subjects. Moments later, alleged police officers arrived where the reporter was interviewing the representatives and took their camera's memory card. One day later, the journalist again noticed he was being followed and notified officials of the National Guard who were at a police post. The police detained the subjects, who were released after identifying themselves as agents of SEBIN. International Freedom of Information Exchange (IFEX)/IPYS. February 23, 2011. [Periodista estadounidense denuncia acoso del servicio de inteligencia](#). [U.S. journalist denounces assault by intelligence service]. Informe On Line. February 25, 2011. [SEBIN sigue los pasos a periodista estadounidense](#). [SEBIN follows trail of U.S. journalist]

⁷⁹² Espacio Público. September 5, 2011. [Hackeadas cuentas de Twitter de usuarios críticos al gobierno venezolano](#). [Twitter accounts of those critical of Venezuelan government hacked]; EFE News Service. September 6, 2011. [Hackers chavistas intervinieron cuentas de opositores por "atacar" a Chávez](#). [Chavist hackers broke into opposition accounts for "attacking" Chavez]

of the hacking was to prevent the legitimate owners of the accounts from using them “under the guise of freedom of expression” to attack Venezuelan institutions and the Head of State. The N33 group maintained that it had no links to the Government but was a sympathizer of President Chávez.⁷⁹³ As of the date this report is being completed, the hacking of electronic accounts continues and no information has been received regarding investigations begun by the State to identify and punish those responsible.

507. On April 7, the journalist Maolys Castro and the photographer Ernesto Morgado, both of the daily *El Nacional*, were detained for some six hours at the military installations at Fort Tiuna, in Caracas, where they were covering a demonstration of victims of natural disasters being housed at that military center. Based on the reports, soldiers held the reporters at the entrance to the fort; took away their identity documents and did not tell them why they were being detained. They were released hours later after being forced to sign a document in the presence of attorneys and officials from the Public Defender’s Office.⁷⁹⁴

508. On April 7, the Director of the Educational Zone of the State of Mérida dismissed the educator, Manuel Aldana, Director of the “Rafael Antonio Godoy” State College in Mérida, allegedly for having informed the official newspaper “Correo del Orinoco” that cases of the AH1N1 flu had been detected at the school.⁷⁹⁵

C. Indirect restrictions on freedom of expression: calls to suspend programming that the authorities find “offensive”

509. The IACHR was informed that on January 13 the National Telecommunications Commission (CONATEL) called on the television company *Televen* “to immediately suspend transmission of the *12 Corazones* programs and the Colombian soap opera *Chepe Fortuna*, because of their demeaning treatment of Venezuela.”⁷⁹⁶ On January 15, in his report to the National Assembly, President Hugo Chávez questioned the transmission of the Colombian soap opera, which

⁷⁹³ Redpres Noticias. September 2, 2011. [Grupo Hacker #N33 se pronuncia y se atribuye hackeos a cuentas de personajes conocidos en twitt](#). [Hacker Group #N33 announces itself and claims it hacked accounts of persons known in Twitter]. *Venezolana de Televisión*. La Hojilla. September 3, 2011. [Mario Silva lee un supuesto comunicado de los hackers #33](#). [Mario Silva Lee reads an alleged communication from the #33 hackers]

⁷⁹⁴ The document signed by the journalists stated that they were not mistreated and that they needed to identify themselves in advance in order to enter a military installation. The reporters insisted they were detained outside the fort. *Espacio Público*. April 8. [Gremios denuncian abuso de autoridad](#). [Unions denounce abuse of authority]; *Noticias 24*. April 7, 2011. [Periodistas de El Nacional retenidos en Fuerte Tiuna son liberados tras firmar acta](#). [El Nacional journalists held at Fort Tiuna are released after signing document]

⁷⁹⁵ Institute for Press and Society (IPYS)/IFEX. April 15, 2011. [Destituyen a director de colegio por declarar a la prensa sobre casos de gripe AH1N1](#). [College director dismissed for telling press about AH1N1 flu cases]; *El Universal*. April 9, 2011. [Destituyen a docente que alertó casos de AH1N1 en el estado Mérida](#). [Teacher who warned of AH1N1 cases in State of Merida dismissed]; *Correo del Orinoco*. March 16, 2011. [Se detectaron en Mérida dos casos de influenza AH1N1](#). [Two cases of AH1N1 flu detected in Merida]

⁷⁹⁶ According to reports, in the soap opera *Chepe Fortuna* one of the characters is a woman named Venezuela, whose pet is a chihuahua named *huguito*. In one show, which led to the criticism, the dog was lost and Venezuela asks herself “and now what am I going to do without *Huguito*,” to which a friend answers “you will be free, Venezuela.” On January 13, both programs were sharply criticized on the “La Hojilla” program on the state channel *Venezolana de Televisión*. According to a communication from CONATEL: “The Colombian soap opera *Chepe Fortuna* (...) underestimates the intelligence of the viewer by presenting two characters identified as the sisters Colombia and Venezuela, with the second character being characterized as associated with criminal and interventionist activities, a metaphor that indicates blatant manipulation of the script to demoralize the Venezuelan people.” *El Universal*. January 13, 2011. [Conatel exhortó a Televen a suspender un programa y una novela](#). [CONATEL urged Televen to suspend a program and a soap opera]; RCN. Undated. [Escena: “Sin Huguito” de Chepe Fortuna](#). [“Without Huguito” scene from *Chepe Fortuna*]

he called “disrespectful” of Venezuela.⁷⁹⁷ President Chávez indicated that *Telegen* had agreed to remove the soap opera.

D. Criminal proceedings against journalists and opposition leaders

510. On January 27, the Criminal Cassation Chamber of the Supreme Court of Justice let stand the decision imposing⁷⁹⁸ 30 months in prison on the journalist, Gustavo Azócar, for the crime of “unlawful enrichment from the business of government.” The judges rejected a cassation appeal filed by the journalist’s defense.⁷⁹⁹ Gustavo Azócar was granted the benefit of conditional release but received an additional punishment of political disqualification. The journalist was also forbidden to speak about his case and in July 2009 he was imprisoned for eight months for reproducing news related to his legal situation in a personal blog.⁸⁰⁰ On February 7, 2011, Gustavo Azócar appeared before a court in the State of Táchira accused of defamation⁸⁰¹ of an Army officer. According to the reports, the case began with an article that Gustavo Azócar published in September 2004 in the daily *El Universal*, in which he cited an official report discussing alleged irregularities in tasks involved in registering citizens, under the responsibility of the complaining military official. In a conciliation agreement, in April 2005, the journalist agreed to allow the official to respond on this television program “Café con Azócar” on *Televisión Regional del Táchira*. However, the officer had not received authorization from his superiors to discuss the case. When he was finally able to make statements, the complainant indicated that responsibility for the alleged offense belonged to the author of the report and not the journalist. However, processing of the case continued.⁸⁰²

511. The IACHR learned of the criminal conviction on July 13, 2011 of the former Governor of the State of Zulia, Oswaldo Álvarez Paz, for the crime of spreading false information, as established in the Penal Code of the Bolivarian Republic of Venezuela.⁸⁰³ According to the information received, Court 21 of the Metropolitan Area of Caracas sentenced Álvarez Paz to two years in prison, with the benefit of conditional release, and prohibited him from leaving the country. The case began on March 8, 2010, when Álvarez Paz talked on the “Aló Ciudadano” program aired by the private broadcaster *Globovisión* about international judicial investigations into the alleged activities and links of international organized crime in Venezuela. Because of these comments, the

⁷⁹⁷ VTV. January 15, 2011. [El Comandante Presidente Hugo Chávez ante la Asamblea Nacional](#). [Commander President Hugo Chavez before the National Assembly]; *El Universal*. January 17, 2011. [Presidente celebra salida del aire de “Chepe Fortuna”](#). [President celebrates removal of “Chepe Fortuna” from air]; *El Espectador*. January 15, 2011. [Chávez celebra suspensión de novela colombiana que “irrespetaba” a Venezuela](#). [Chavez celebrates suspension of Colombian soap opera “disrespectful” of Venezuela]

⁷⁹⁸ Supreme Court of Justice. Principal Matter 1JM-1276-07. [Review of judgment of January 2010](#); Ministry of Popular Power for Communication and Information. Judicial. [Sentencia Condenatoria bajo libertad condicional para Gustavo Azócar](#). [Conviction with conditional release for Gustavo Azócar]

⁷⁹⁹ Supreme Court of Justice. Judgment of January 27, 2011. [Expediente C10-297](#). [Case file C10-297]

⁸⁰⁰ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. Para: 424.

⁸⁰¹ Third Court of First Instance (at trial). February 1, 2005. [Orden para librar boleta de citación a Gustavo Enrique Azócar Alcalá](#). [Order to issue summons for Gustavo Enrique Azócar]

⁸⁰² Reporters Without Borders. February 8, 2011. [El periodista Gustavo Azócar comparece de nuevo ante la justicia, esta vez por un caso de “difamación” con una base dudosa](#). [Provincial journalist prosecuted on dubious criminal libel charge]; *El Universal*. February 5, 2011. [Gustavo Azócar regresa a tribunales este lunes](#). [Gustavo Azócar returns to court this Monday]

⁸⁰³ According to Article 297-A, “[a]nyone who spreads false information through any media, whether print, radio, television, telephonic, e-mail, or written brochure, to cause panic among the population or keep it in a state of anxiety shall be punished with imprisonment of two to five years.” Official Gazette of the Bolivarian Republic of Venezuela. March 16, 2005. Special Official Gazette No. 5763. Penal Code. [Gaceta Oficial No. 5.763 Extraordinario. Código Penal](#).

governing party deputies, Manuel Villalba and Pedro Lander, filed a complaint with the Public Prosecutor's Office seeking an investigation into the conduct of Álvarez Paz for having committed various crimes established in the Venezuelan Penal Code, including conspiracy, spreading false information, and instigating the commission of a crime. In addition to being a former Governor of Zulia, Oswaldo Álvarez Paz is a primary candidate from the opposition Constitutional Pole and was a candidate for the presidency of Venezuela in 1993.⁸⁰⁴ As of October 2011, Oswaldo Álvarez Paz had not received copy of the conviction and had not been able to appeal the decision so far.⁸⁰⁵

512. The IACHR was informed of the decision made by the Venezuelan courts to temporarily prohibit circulation of the weekly paper *Sexto Poder* in Venezuela and to order the capture, arrest, and criminal prosecution of the editorial director and president of that media outlet.⁸⁰⁶ According to the information received, the edition of the weekly *Sexto Poder* for Sunday, August 21, 2001 came out on August 19. It included a satirical article titled "The Powerful Ladies of the Revolution," illustrated with a photographic montage of six female senior officials of the Venezuelan State dressed as cabaret dancers. The point of the publication was to question the alleged dependence on the Executive Branch of oversight agencies in Venezuela.⁸⁰⁷ Some of the female officials referred to, as well as other male senior public officials, stated that the photomontage and text offended "the dignity of Venezuelan women" and constituted "gender-based violence." They claimed that the publication contained "hate speech" and that it "vilified" the officials and the institutions they represented.⁸⁰⁸ Once the publication became known, the Comptroller filed a complaint against the journalists with the Prosecutor's Office and less than 24 hours later the Ninth Preliminary Proceedings Court of the Metropolitan Area of Caracas ordered a precautionary measure to prohibit the "publication and distribution" of the weekly "by any means."⁸⁰⁹ The same court ordered the arrest of the general manager of the *Sexto Poder*, Dinorah Girón Cardona, and its president and general editor, Leocenis García, for alleged violations of the Penal Code of Venezuela based on publication of the referenced article. On August 21, agents of

⁸⁰⁴ Public Prosecutor's Office of the Bolivarian Republic of Venezuela. July 13, 2011. [MP logró condena de 2 años para Oswaldo Álvarez Paz por información falsa](#). [Public Prosecutor's Office succeeds in sentencing Oswaldo Álvarez Paz to two years for false information]; VTV. July 13, 2011. [Oswaldo Álvarez Paz recibe condena a 2 años de prisión por difundir información falsa](#). [Oswaldo Álvarez Paz sentenced to two years in prison for spreading false information]; Globovisión. March 8, 2010. *Aló Ciudadano*. Part 1. [Entrevista a Oswaldo Álvarez Paz](#). [Interview with Oswaldo Álvarez Paz]

⁸⁰⁵ El Universal. October 1, 2011. [Oswaldo Álvarez Paz no ha podido apelar su condena](#). [Oswaldo Álvarez Paz has been unable to appeal his conviction]

⁸⁰⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression, May 23, 2011. Press Release R96/11. [Office of the Special Rapporteur Expresses Concern over Detention of Journalists and Serious Measures Taken against Magazine in Venezuela for Publishing Article that Offended the Authorities](#); Office of the Public Prosecutor of the Bolivarian Republic of Venezuela. August 23, 2011. [MP imputó a directora general de 6to Poder](#). [Office of the Public Prosecutor indicted General Director of Sexto Poder]; Committee for the Protection of Journalists (CPJ). August 24, 2011. [Clausuran semanario venezolano y dos ejecutivos son acusados](#). [Venezuelan weekly shut down and two executives are accused]

⁸⁰⁷ The note and illustration showed the President of the Supreme Court of Justice, Luisa Estella Morales; the General Prosecutor, Luisa Ortega; the Ombudswoman, Gabriela Ramírez; the interim General Comptroller, Adelina González; the President of the National Electoral Council, Tibusay Lucena, and the Vice President of the National Assembly, Blanca Eekhout, all dressed as cabaret dancers. Among other assertions, the publication indicated that each of the representatives of the above-mentioned entities "played a specific role within the carabet led by Mr. Chávez." Twitpic. August 22, 2011. [La Foto: Las poderosas de la Revolución Bonita](#). [Photo: Powerful ladies of the pretty revolution]

⁸⁰⁸ Noticias 24. August 22, 2011. ["Publicación del Semanario es un ataque a las instituciones del Estado"](#). [Publication by Weekly is an attack on the institutions of government]; Minuto a Minuto. August 22, 2011. [Maryclen Stelling calificó de burla la publicación de Sexto Poder](#). [Maryclen Stelling called publication by Sexto Poder a joke]; VTV. Contragolpe. August 23, 2011. [Sexto Poder. Gabriela Ramírez Defensora del Pueblo](#). [Sexto Poder. Gabriela Ramírez, Public Defender]

⁸⁰⁹ Judicial Branch of the Bolivarian Republic of Venezuela. Ninth First Instance Court (procedural) of the Criminal District of Caracas. August 20, 2011. Precautionary measure. Available in the archive of the Office of the Special Rapporteur for Freedom of Expression.

the SEBIN arrested Girón, who was released two days later when the referenced Ninth Court ordered conditional release. However, the court ordered that she be prohibited from leaving the country, that she appear in court to leave her signature every 15 days, and prohibited her from referring to her case and participating in public assemblies. On August 23, the Special Rapporteurship asked the State for information on this case. In its response, the State indicated that, based on her publication, Dinorah Girón was being charged with the crimes of “vilification of a public official, public instigation of hate, and public offense based on gender” while Leocenis García was being charged for “instigating hate, vilification and gender-based violence.” According to the information supplied by the State, such crimes are established and punished under the Penal Code and in the Organic Law on the Right of Women to a Life Free of Violence.⁸¹⁰ In addition, on August 29, the State informed the Special Rapporteurship that it had revoked the prohibition on publication of the weekly. However, it was reported that the judge imposed an order prohibiting *Sexto Poder* from publishing information containing “graphic or textual” information that “constitutes an offense or insult against the reputation or decorum of any representative of the branches of government, where the purpose is to expose them to scorn or public hatred.” The court also prohibited the publication of “degrading and offensive content against women” and ordered the removal of copies of the edition of this past August 19 that were still available to the public.⁸¹¹ The weekly could not circulate on August 28 because the judicial measure originally adopted was in effect. On August 30, Leocenis García turned himself in to the authorities.⁸¹²

513. According to the information the IACHR has received, Leocenis García was on a hunger strike in the detention facility where he was being held. In the early morning hours of November 17, 2011, he was reportedly taken against his will to the Military Hospital. The information indicates that his family and the lawyers representing Leocenis García did not initially have information concerning his whereabouts and that despite his delicate health he allegedly received no medical treatment. On November 18, 2011, in exercise of its authorities under Article 41 of the American Convention, the Commission requested information about the situation and about Mr. Leocenis García’s health and the conditions under which he is being held.

E. Administrative proceedings

514. The IACHR learned that the CONATEL Social Responsibility Board penalized the television channel Globovisión on October 18, 2011 by imposing a fine of 9,394,314 Strong Bolívares (about US\$ 2.1 million), the equivalent of 7.5% of its gross revenue for the year 2010.⁸¹³ According to the information received, the penalty was imposed due to violations of Articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media (the *Resorte* Law), based on material aired by Globovisión between June 16 and June 19, 2011 about the prison situation at the El Rodeo Penitentiary Center.⁸¹⁴ According to the resolution issued on October 18,

⁸¹⁰ Communication from State representative to the Inter-American System of Human Rights, Germán Saltrón Negretti. AGEV/000384. August 24, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹¹ Communication from State representative to the Inter-American System of Human Rights, Germán Saltrón Negretti. AGEV/000384. August 24, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression; Committee for the Protection of Journalists (CPJ). August 30, 2011. [Permite la reapertura de semanario venezolano, ejecutivos aún acusados](#). [Venezuelan weekly allowed to reopen; executives still accused]

⁸¹² Reporters Without Borders. September 20, 2011. [Apelan la decisión de que el editor de Sexto Poder permanezca en prisión preventiva](#). [Decision to keep editor of Sexto Poder under preventive detention appealed]; El Universal. September 19, 2011. [Defensa de Leocenis García introduce recurso de apelación](#). [Leocenis García’s defense files appeal]

⁸¹³ Bolivarian Republic of Venezuela. Bureau of Social Responsibility. October 18, 2011. [Providencia Administrativa No PADRS-1.913](#). [Administrative Order No. PADRS-1.913]

⁸¹⁴ Article 27 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that: *Radio, televisión, and electronic media are not permitted to disseminate messages that:*

the Social Responsibility Board determined that the television channel had transmitted “messages that promoted disturbances of the public order, advocated crime, and incited against the legal system in effect, promoted hatred for political reasons and fomented anxiety among the population, on June 16, 17, 18, and 19, 2011.” As the Special Rapporteurship learned, for several days Globovisión reported information on the events that occurred in the area of the El Rodeo Penitentiary Center and the intervention of law enforcement. Coverage included interviews of the relatives of those in prison, opposition politicians, and government officials.⁸¹⁵

515. The IACHR has expressed its concern regarding the Law on Social Responsibility in Radio, Television and Electronic Media and its most recent reform of December 2010, which introduces a broad catalogue of restrictions written in vague and ambiguous language, and makes the sanctions for such prohibited actions more onerous. In that regard, this Rapporteurship considers it must observe that vague and imprecise legal provisions may grant overly broad discretionary powers to the authorities, which are incompatible with the full effect of the right to freedom of expression, because they may support potentially arbitrary actions that impose disproportionate liabilities for airing news, information, or opinions of public interest. By their mere existence, provisions of this type discourage the transmission of information and opinions due to fear of sanctions and may lead to broad interpretations that unduly restrict freedom of expression. Thus, the State must be specific about the conduct that may be subject to liability later, so as not to affect the free expression of uncomfortable ideas or inconvenient information regarding the actions of the authorities.

...continuation

1. *Incite or promote hate and intolerance for religious, political, gender-related, racist, or xenophobic reasons.*

2. *Incite or promote and/or advocate crime.*

(...)

4. *Foment anxiety in the population or affect the public order.*

(...)

7. *Incite or promote disobedience to the established legal order ...”*

Article 29 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that: *Those subject to the application of this Law shall be punished:*

1. *With a fine of up to ten percent (10%) of gross revenues in the year immediately preceding the year when the violation was committed, and/or suspension for up to 72 continuous hours of their transmission, when they disseminate message that:*

a. *Promote, advocate or incite disturbances of the public order;*

b. *Promote, advocate or incite crime;*

c. *Incite or promote hatred or intolerance for religious, political, gender-related, racist or xenophobic reasons;*

(...)

g. *Foment anxiety in the population or affect the public order ...”*

Bolivarian Republic of Venezuela. Social Responsibility Board. October 18, 2011. [Providencia Administrativa No PADRS-1.913. Capítulo II](#). [Administrative Order No. PADRS-1.913, Chapter II]. See also: Ministry of Popular Power for Communication and Information. Official Gazette No. 39.610. February 7, 2011. [Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos](#). [Law on Social Responsibility in Radio, Television and Electronic Media]

⁸¹⁵ Venezolana de Televisión. La Hojilla. June 18, 2011. [Globovisión manipulación El Rodeo I cárcel tomada Guardia Nacional Bolivariana de Venezuela](#). [Globovisión charges manipulation. El Rodeo I prison taken by Bolivarian National Guard of Venezuela] *Min* 22, 30, 38, 53, 1:04, 1:10, 1:23; BBC World. June 19, 2011. [El descontrol del sistema carcelario de Venezuela](#). [Prison system in Venezuela out of control]; El País. July 13, 2011. [Los presos de la cárcel venezolana de El Rodeo II finalizan un mes de motín](#). [Prisoners at Rodeo II prison in Venezuela end a month of uprisings]

516. The IACHR has also expressed its concern regarding the absence of guarantees on the independence of agencies responsible for implementing the Law on Social Responsibility in Radio, Television and Electronic Media. The Rapporteurship notes that the President of the Republic may freely appoint and remove the members of CONATEL and there are no safeguards to ensure their independence and impartiality. In addition, seven of the eleven members of the Social Responsibility Board are selected by the Executive Branch, the referenced law does not establish any criteria for appointing the board members, and does not define a fixed term of office for them or establish specific grounds for their removal.

517. The IACHR received information that *Canal 67 Tu Imagen TV* has been excluded from the programming grid of the cable company, Representaciones Inversat C.A, Tele-Red, in Charallave, State of Miranda, since March 28, 2011.⁸¹⁶ According to the information received, its exclusion from the grid occurred after the mayor of Charallave, José Ramírez, wrote a note on November 16, 2010 to the President of the Tele Red company demanding that *Canal 67* be “suspended indefinitely from its transmissions.” In the same note, the mayor claimed that the content of *Canal 67* “has been systematically partial in favoring an opposition political sector to the detriment of economic equilibrium,” launches “misinformation attacks” and “gathers opinions against the municipal government in the communities.”⁸¹⁷ On March 28, officials of CONATEL appeared at the facilities of *Canal 67* and Representaciones Inversat to conduct an inspection of the technical conditions at the station and its legal situation, during which it noted the lack of a written contract between the television station and the cable company, leading to the channel’s exclusion from the programming grid.⁸¹⁸ On April 7, 2011, *Canal 67* remedied the failure to sign a contract with Representaciones Inversat C.A, and this was immediately demonstrated to CONATEL.⁸¹⁹ Nonetheless, the cable company alleged that it would keep *Canal 67* off the grid until it received written approval from CONATEL. Despite requests for information made to CONATEL and various State agencies regarding the situation, the representatives of *Canal 67* and the cable company have not received a response and the channel’s suspension continues.⁸²⁰

518. The IACHR received information about proceedings that shut down various radio stations, some of them included in the proceedings initiated in 2009 against 34 stations that, according to CONATEL authorities,⁸²¹ violated provisions of the Organic Law on Telecommunications.⁸²² On February 2, the Supreme Court of Justice confirmed the shutdown of *Radio Bonita “La Guapa”* in Guatire, State of Miranda. According to the reports, the Political-

⁸¹⁶ Tu Imagen TV. May 9, 2011. Letter from the General Director of Tu Imagen TV, Douglas Abreu Zárate, to the General Manager of Operations of CONATEL, Enrique Quintana. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹⁷ Mayor’s Office of the Municipality of Cristóbal Rojas Charallave. November 16, 2010. Letter from Mayor José Ramírez to the President of Tele-Red, José Manuel Angarita. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹⁸ CONATEL. March 28, 2011. Report on inspection at administrative offices of Tu Imagen TV. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹⁹ Contract between Representaciones Inversat, C.A. and Producciones Tu Imagen TV, C.A. April 7, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸²⁰ Tu Imagen TV. Letter from the General Director of Tu Imagen TV, Douglas Abreu Zárate, to the General Director of CONATEL, Pedro Rolando Maldonado, the General Manager of Operations CONATEL, Enrique Quintana, and the Chief of Regulatory Follow-up of CONATEL, Mikhail Marsiglia. May 17, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸²¹ Ministry of Public Works and Housing. July 31, 2009. [Oficio 1095](#). [Official communication 1095]

⁸²² See, IACHR. 2009 Annual Report. Volume II: [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 660 *et seq.*

Administrative Chamber of the Supreme Court of Justice (TSJ) declared inadmissible the appeal⁸²³ filed by *Radio Bonita "La Guapa"* seeking to overturn the shutdown order issued by what was then the Ministry of Popular Power for Public Works and Housing.⁸²⁴ On March 18, CONATEL ordered the shutdown of the station *Carabobo Estéreo 102.3 FM*, in the city of Valencia, State of Carabobo, as well as the seizure of the equipment and materials needed to operate the radio station, since it did not have "the proper administrative authorization and license."⁸²⁵ On January 20, National Guard soldiers closed the station *Onda Costera 95,1 FM* in Costa de Oro, State of Aragua, and seized the broadcasting equipment. According to the information received, local authorities requested the shutdown because it aired information regarding the illegal occupation of housing in that town.⁸²⁶ On March 25, CONATEL ordered the shutdown and seizure of equipment at the station *Musicable Higueroite 93.7 FM*, in Higueroite, State of Miranda, alleging clandestine operations by the station, a claim denied by the station's owners.⁸²⁷ The Special Rapporteurship had already expressed its concern in 2009 over the massive shutdown of stations and the fact that, after several years of inaction, the authorities would announce such measures against a background of tension between the private media and the government and constant criticism by government agents regarding the editorial content of the media that would be affected, suggesting that the editorial outlook of these media outlets was one of the reasons for the shutdown measures.⁸²⁸

519. The IACHR was informed that a decree published on March 29, 2011 in the Official Gazette granted the Vice President of the Republic unilateral power to define the direction of public policies in all matters related to the radio spectrum and the power to "grant, revoke, renew, and suspend" radio and television frequency licenses.⁸²⁹

⁸²³ Supreme Court of Justice. Administrative-Political Chamber. Trial Court. June 8, 2010. [Exp. 2010-0279](#). [Case File 2010-0279]

⁸²⁴ Supreme Court of Justice. February 2, 2011. [Sentencia 00139. Expediente 2010-0279](#). [Decision 00139. Case File 2010-0279]; Inter-American Press Association (IAPA). April 2011. [Country reports. Venezuela](#).

⁸²⁵ National Telecommunications Commission (CONATEL). March 18, 2011. [CONATEL inicia procedimiento administrativo sancionatorio a emisora Carabobo Estéreo](#). [CONATEL begins administrative proceeding to penalize Carabobo Estéreo station]; National Journalists Association. March 19, 2011. [Periodistas de Carabobo en emergencia por cierre de emisora FM](#). [Carabobo journalists facing emergency due to shutdown of FM station]

⁸²⁶ El Carabobeño. January 22, 2011. [Pobladores de Ocumare de la Costa denunciaron cierre de emisora radial](#). [Residents of Ocumare de la Costa denounce shutdown of radio station]; Inter-American Press Association (IAPA). April 2011. [Country reports. Venezuela](#).

⁸²⁷ National Telecommunications Commission (CONATEL). March 25, 2011. [CONATEL inició procedimiento administrativo sancionatorio a emisora Musicable por funcionar presuntamente de forma clandestina en Miranda](#). [CONATEL began administrative proceeding to penalize Musicable station for allegedly operating clandestinely in Miranda]; Institute for Press and Society (IPYS). April 5, 2011. [CONATEL cierra emisora e incauta equipos](#). [CONATEL closes station and seizes equipment]; Globovisión. March 25, 2011. [CONATEL ordena cierre e incautación de equipos a emisora en Higueroite](#). [CONATEL orders shutdown of station and seizure of equipment in Higueroite]; Noticias 24. March 25, 2011. [Conatel ordenó el cierre de operaciones de la emisora Musicable Higueroite 97,7 FM](#). [CONATEL ordered shutdown of operations at Musicable Higueroite 97.7 FM station]

⁸²⁸ See, IACHR. 2009 Annual Report. December 30, 2009. Volume II: [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 671 *et seq.*

⁸²⁹ Paragraph three of the new Article 2 of the Organic Regulations on the Office of the Vice President of the Republic, amended by Decree 8122 of March 29, 2011, signed by President Hugo Chávez, establishes, *inter alia*, that the Vice President has the power to "grant, revoke, renew and suspend administrative authorizations and licenses in the area of open radio and television broadcasting and non-profit community public service radio and television broadcasting." Paragraph one also assigns to the Vice President "the leadership of public policies on matters relating to the administration, regulation, organization, and control of the radio spectrum." Since August 3, 2010 the Office of the Vice President had attached to CONATEL [missing text here?]. However, the Vice President was not authorized to make unilateral decisions until the aforementioned decree took effect. Official Gazette of the Bolivarian Republic of Venezuela. March 29, 2011. [Decreto Número 8.122](#) [Decree No. 8.122]; Institute for Press and Society (IPYS)/IFEX. April 7, 2011. [Vicepresidente podrá revocar concesiones de radio y televisión](#). [Vice President may revoke radio and television licenses]

F. Access to information

520. The IACHR received information about a series of problems in guaranteeing the right of access to public information as well as judicial interpretations that restrict that right, the absence of a suitable judicial remedy, restrictions on journalists' access to information sources, lack of information available on government websites, and lack of response to requests for public information.⁸³⁰ According to reports, the criterion being used by public institutions to reject requests for information is a decision handed down by the Supreme Court of Justice on July 15, 2010, requiring "i) that the person requesting the information expressly indicate the reasons or purposes for which he or she needs the information; and ii) that the magnitude of the information being sought is in proportion to the utilization and use one wishes to make of the information being requested."⁸³¹ That criterion was reflected, for example, in a response that CONATEL gave to a request for information filed by the Public Arena Civil Association [*Asociación Civil Espacio Público*] in which the regulatory agency maintained that, in accordance with a binding decision from the Supreme Court of Justice, the requester must communicate to the entity "the ultimate purpose for which the information being sought is needed, so that this regulatory entity can make the appropriate determination, in view of the weight assigned between the proportionality of the information and the use to which it will be put."⁸³² The jurisprudence of the Inter-American Court of Human Rights has maintained that "[the] information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied."⁸³³ There are also obstacles in terms of having a suitable judicial remedy ensuring access to public information, given that in Venezuela there is no law on access to information and the courts have decided to reverse the original assumption according to which the right of access could be sought through a quick and simple remedy (appeal) and maintain that one must exhaust the entire Appeal for Failure to Act [*Recurso de Abstención o Carencia*] procedure established in the Organic Law of the Contentious Administrative Law Jurisdiction, which is neither quick or simple.

521. The IACHR learned of limitations that had been imposed on journalists' access to various public agencies. As reported to this office, during 2011 there has been an increase in the restrictions imposed on journalists' ability to access and obtain information from entities such as the National Assembly, the Supreme Court of Justice, the Miraflores Palace (seat of the Executive Branch), the Ministry of Planning and Finance, and the headquarters of the state-owned company, PDVSA.⁸³⁴ In the National Assembly, since February, journalists and photographers are prohibited from attending legislative debates and are only allowed to follow the debates from a television set in an adjoining room. The audio for the transmission was even suddenly suspended on February 3,

⁸³⁰ Cf. Hearing on right of access to public information in Venezuela held at the IACHR on October 25, 2011 during the 143rd Period of Session.

⁸³¹ Public Arena sought information regarding the salary and other benefits of the Comptroller General of the Republic, as well as the personal compensation table for that institution. Supreme Court of Justice. Constitutional Chamber. July 15, 2010. [745-15710-2010-09-1003](#).

⁸³² CONATEL. September 23, 2011. DG/CJ/No 606. Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸³³ I/A Court H.R. [Case of Claude Reyes et al. v. Chile](#). Judgment of September 19, 2006. Series C No. 151, para. 77.

⁸³⁴ Knight Center for Journalism in the Americas. April 10, 2011. [Gremio y sindicato de prensa denuncias agresiones y falta de acceso a fuentes oficiales en Venezuela](#). [Press guild and union denounce attacks and lack of access to official sources in Venezuela]; El Nacional. April 7, 2011. [CNP y SNTTP denuncias restricciones del Gobierno al trabajo periodístico](#). [CNP and SNTTP denounce government restrictions on journalism]; El Universal. April 8, 2011. [Periodistas exigen acceso a las fuentes informativas](#). [Journalists demand access to information sources]

based on the claim that the session had been declared private. In response to the journalists' protests, the legislative employee pushed and insulted them.⁸³⁵ On February 21, one journalist involved in that incident, Oliver Fernández, from the station *Televen*, had his credentials for access to that public building revoked without explanation by the National Assembly. He submitted another request to the press team headed by Ricardo Durán for accreditation to access the Assembly, but this was denied although no written reasons were given for that denial. In practice, the new rules were extended even to the free movement of journalists within the legislative building. Prior to February, the restriction only covered television cameramen.⁸³⁶ The limitations were established based on reform of the Internal Rules of Procedure and Debates of the National Assembly approved in December 2010, according to which the National Assembly's *Fundación Televisora* will provide private stations with the signal from legislative sessions.⁸³⁷ According to reports, between January and September 2011, national organizations defending freedom of expression recorded 21 complaints involving restrictions on journalists' access to sources of official information, which includes both limitations on entering public buildings and discrimination against private communication media in terms of their participation in press conferences held by public agencies.⁸³⁸

522. According to reports, an analysis of the 65 requests for information submitted to various public agencies between August and October 2011 indicated that 82% of the requests received no response, while 12% obtained a positive response and 2% received an explicit negative response.⁸³⁹ In addition, an evaluation of the websites of 28 public institutions, performed during October 2011, revealed that none of them meets the standards established in the Model Law on Access to Public Information approved by the OAS General Assembly in 2009, although there is greater compliance in mayoral offices in the Metropolitan Area of Caracas and less compliance in the national central government.⁸⁴⁰

⁸³⁵ El Universal. February 4, 2011. [Imponen más restricciones a los periodistas en la AN](#). [More restrictions imposed on journalists in National Assembly]; Espacio Público. February 4, 2011. [Aumentan restricciones de periodistas y fotógrafos a la AN](#). [Restrictions on journalists and photographers in National Assembly increased]; Espacio Público. February 23, 2011. [Periodista de Televen fue vetado en la Asamblea Nacional](#). [Televen journalist banned from National Assembly]

⁸³⁶ El Universal. February 4, 2011. [Imponen más restricciones a los periodistas en la AN](#). [More restrictions imposed on journalists at National Assembly]

⁸³⁷ Article 56 of the new Internal Rules of Procedure and Debate of the National Assembly of Venezuela, a chapter in the Operating System of the National Assembly, establishes that: "In order to guarantee access to information in accordance with Article 108 of the Constitution of the Republic, plenary sessions shall be transmitted by the National Assembly's *Fundación Televisora* (ANTV) and the State television station may provide support for transmission. Conditions shall be provided so that media outlets interested in transmitting the information produced in the course of the session may do so through the ANTV signal." These Rules, in Article 87 of the same chapter, established that: "All sessions shall be public. In view of the content of Article 108 of the Constitution, audiovisual communications media may partially or totally transmit the development of the sessions." National Assembly of the Bolivarian Republic of Venezuela. December 22, 2010. [Reglamento Interior y de Debates de la Asamblea Nacional](#). [Internal Rules of Procedure and Debate of the National Assembly]; National Assembly of Venezuela. September 5, 2000. [Reglamento Interior y de Debates de la Asamblea Nacional](#).

⁸³⁸ Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

⁸³⁹ Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

⁸⁴⁰ According to the evaluation done by the Public Arena Civil Association, the information that is usually available would represent information related to the organic structure, functions, location of department, names of employees, services offered, and laws and operational manuals, and the least available information is that related to employee salaries, complaints, and responses from agencies, requests received, lists of published information, decision-making procedures, budget, and subsidies granted. Cf. Hearing on right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session; Organization of American States. Department of International Law. June 4, 2009. Resolution of the OAS General Assembly AG/RES. 2514 (XXXIX-O/09). [Ley Modelo sobre Acceso a la Información](#). [Model Inter-American Law on Access to Information]